

**FINANCING AGREEMENT**

**between**

**TEXAS PUBLIC FINANCE AUTHORITY**

**and**

**CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS**

**Pertaining to**

**TEXAS PUBLIC FINANCE AUTHORITY  
STATE OF TEXAS  
GENERAL OBLIGATION COMMERCIAL PAPER NOTES  
(CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS PROJECT),  
SERIES A (TAXABLE)  
AND  
SERIES B (TAX-EXEMPT)**

**Dated as of August 3, 2009**

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## FINANCING AGREEMENT

**FINANCING AGREEMENT**, dated as of August 3, 2009, between the TEXAS PUBLIC FINANCE AUTHORITY (the "Authority") and the CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS (the "Qualified Agency");

### WITNESSETH:

**WHEREAS**, the Authority is authorized to provide financing of certain projects (hereinafter defined) for the Cancer Prevention and Research Institute of Texas through the issuance of commercial paper notes pursuant to certain provisions of the Texas Constitution and other statutory and regulatory authorities including, but not limited to, Article III, Section 67 of the Texas Constitution, Chapters 1232 and 1371 Texas Government Code, as amended, Chapter 102, Health and Safety Code, as amended, ("Agency Act") and Part X, Title 34, Texas Administrative Code (collectively, the "Authorizing Law");

**WHEREAS**, pursuant to Article III, Section 67 of the Texas Constitution and the Agency Act, the Authority is authorized to issue the Notes, as hereinafter defined, for the Qualified Agency to pay for (1) grants for cancer research, for research facilities and for research opportunities in the State to develop therapies, protocols, medical pharmaceuticals or procedures for the cure or the substantial mitigation of all type of cancer in humans; (2) grants for cancer prevention and control programs in the State to mitigate the incidence of all types of cancer in humans; (3) the purchase, subject to approval by the Qualified Agency, of laboratory facilities by or on behalf of a state agency or grant recipient; and (4) the operation fo the Qualified Agency; and

**WHEREAS**, due to the nature of the majority of the projects to be financed the Authority may issue either taxable Notes or tax-exempt Notes as determined by an Authority Representative at the time of issuance in accordance with the Resolution; and

**WHEREAS**, the parties desire to provide for the financing by the Authority of the projects for the Qualified Agency;

**NOW, THEREFORE**, in consideration of the premises, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND OTHER PRELIMINARY MATTERS

##### **SECTION 1.01 Definitions.**

Except as otherwise provided in this Financing Agreement, the capitalized terms in this Financing Agreement shall have the meanings specified in this section unless the context requires otherwise.

*Agency Act* – Chapter 102, Health and Safety Code, as amended.

*Appropriation Act* – SB1, Article I, Acts 81<sup>st</sup> Legislature, R.S. (2009), and any other act of the Legislature appropriating funds for the Project to the Qualified Agency.

*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, as amended.

*Authorized Agency Representative* – the chief administrative officer of the Qualified Agency or any member of the staff of the Qualified Agency designated by the chief administrative officer or by the governing body of the Qualified Agency as an authorized representative.

*Authorizing Law* – means the “Authorizing Law” as defined in the preamble of this Financing Agreement.

*Board* – the Board of Directors of the Authority.

*Bond Counsel* – any law firm experienced in matters relating to the issuance of tax-exempt obligations and engaged by the Board to render such services.

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

*Closing* – with respect to each sale of Notes, the concurrent delivery of such Notes to, or upon the order of, the initial purchaser(s) in exchange for payment therefor.

*Closing Date* – the date of a Closing.

*Code* – the Internal Revenue Code of 1986, as amended, together with all published Regulations and rulings issued with respect thereto by the United States Department of the Treasury or the Internal Revenue Service.

*Comptroller* – the Comptroller of Public Accounts of the State or any successor thereto, including the individual elected to serve as Comptroller of the State, the Deputy Comptroller, or such other official designated by law to serve or act in the capacity of the Comptroller.

*Costs of Issuance* – the “costs of issuance,” as provided in the Authorizing Law and defined in the Resolution, incurred in connection with the issuance of the Notes.

*Disbursement Certificate* – a certificate of the Authorized Agency Representative for the disbursement of funds from the appropriate account of the Project Fund, in substantially the form of Exhibit "D" of this Financing Agreement.

*Disclosure Documents* – collectively, the Offering Memorandum and any amendments thereto.

*Event of Taxability* – any act or omission that could adversely affect the excludability of the interest on any Note from the gross income of the owner of a Tax-Exempt Note.

*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.

*Financing Agreement* – this Financing Agreement, and any amendments hereto.

*Gross Proceeds* – means any Proceeds and any Replacement Proceeds.

*Interest and Sinking Fund* – the fund by that name created pursuant to Section 4.01 of the Resolution for the purpose of paying Note Obligations.

*Investment Proceeds* – means any amounts actually or constructively received from investing Proceeds.

*Legislature* – the Legislature of the State.

*Notes* – any obligations issued by the Authority from time to time to finance or refinance the Project and includes collectively, the Taxable Notes and the Tax-Exempt Notes as authorized by the Resolution. Any obligation issued to refinance Tax-Exempt Note is referred to herein, as the context may require, as "Tax-Exempt Note."

*Offering Memorandum* – the final official disclosure document authorized by the Authority to be used in connection with the sale of the Notes.

*Proceeds* – means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of the Tax-Exempt Notes which are attributable to financing the Project.

*Project* – collectively, the expenditure of Note Proceeds by the Qualified Agency for grants for cancer research, prevention and control and related purposes and for operations of the Qualified Agency as authorized by Article III, Section 67 of the Texas Constitution, the Agency Act and the Appropriation Act.

*Project Costs* – any costs associated with the Project that are authorized under the Authorizing Law to be paid with proceeds of the Taxable Notes or the Tax-Exempt Notes, as applicable.

*Project Financing Documents* – collectively, all documents furnished by the Qualified Agency to the Authority in connection with the financing of the Project and issuance of the Notes, including (without limitation) the Request for Financing, this Financing Agreement and each Disbursement Certificate.

*Project Fund* – the fund by that name and any other project fund created pursuant to Section 4.01 of the Resolution.

*Qualified Agency* – the “Qualified Agency” as defined in the preamble of this Financing Agreement or any successor thereto.

*Regulations* – means the temporary or final Income Tax Regulations applicable to the Notes pursuant to the Code. Any reference to a section of the Regulations shall also refer to any successor provision to such section hereafter promulgated by the Internal Revenue Service applicable to the Notes.

*Replacement Proceeds* – has the meaning set forth in Section 1.148-1(c) of the Regulations and generally includes amounts that have a sufficiently direct nexus to the Tax-Exempt Notes or to the governmental purpose of the Tax-Exempt Notes to conclude that the amounts would have been used for that governmental purpose if the Proceeds of the Tax-Exempt Notes were not used or to be used for that governmental purpose. For this purpose, the mere availability or preliminary earmarking of amounts for a governmental purpose does not in itself establish a sufficient nexus to cause those amounts to be Replacement Proceeds. Replacement Proceeds include, but are not limited to, sinking funds and pledged funds.

*Request for Financing* – the letter or other communication from the Qualified Agency to the Authority requesting financing for the Project, and any supplements thereto.

*Resolution* – the resolution of the Authority adopted on August 3, 2009 pursuant to which the Notes are authorized to be issued, and any amendments and supplements thereto.

*Sale Proceeds* – means any amounts actually or constructively received from the sale (or other disposition) of any Note, including amounts used to pay underwriters’ discount or compensation and accrued interest other than pre-issuance accrued interest.

*State* – the State of Texas.

*Taxable Notes* – means "Texas Public Finance Authority State of Texas General Obligation Commercial Paper Note (Cancer Prevention and Research Institute of Texas), Series A (Taxable)".

*Tax-Exempt Notes* – means "Texas Public Finance Authority State of Texas General Obligation Commercial Paper Note (Cancer Prevention and Research Institute of Texas), Series B (Tax-Exempt)".

*Transferred Proceeds* – means, with respect to Tax-Exempt Notes, "transferred proceeds" as defined in Section 1.148-9 of the Regulations which includes Proceeds of any Tax-Exempt Notes used to refund Notes outstanding prior to the Closing Date.

**SECTION 1.02 General Rules of Construction.**

(a) A capitalized term used in this Financing Agreement that is not defined herein and that is defined in the Resolution shall have the meaning assigned to it in the Resolution.

(b) Whenever in this Financing Agreement 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.

(c) The table of contents and the titles given to any article or section of this Financing Agreement are for convenience only and are not intended to modify the article or section.

**SECTION 1.03 Preamble.**

The statements and findings in the preamble of this Financing Agreement are hereby adopted and made a part of the Financing Agreement.

**ARTICLE II**

**GENERAL REPRESENTATIONS AND WARRANTIES**

**SECTION 2.01 General Representations and Warranties of Authority.**

The Authority represents and warrants as follows:

(1) the Authority is a validly existing agency of the State authorized to operate under the Texas Public Finance Authority Act, Chapter 1232, Texas Government Code, as amended;

(2) the Authority has full power and authority to execute and deliver this Financing Agreement, perform its obligations thereunder, and carry out the transactions contemplated hereby;

(3) the Authority has duly authorized the execution and delivery of this Financing Agreement and the performance of its obligations thereunder;

(4) the execution and delivery of this Financing Agreement, 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;



(5) the Authority has full power and authority to issue the Notes, to cause funds to be made available to finance the Project in accordance with the Resolution and this Financing Agreement and to perform its obligations under the Resolution;

(6) the Resolution has been duly adopted by the Authority, is in full force and effect, and constitutes the legal, valid, and binding act of the Authority; and

(7) this Financing Agreement, when duly executed and delivered by the Authority, will constitute a legal, valid, and binding obligation of the Authority; and

(8) the Authority has not revoked its authorization of the Qualified Agency to declare official intent on behalf of the Authority for purposes of the Code.

## **SECTION 2.02 General Representations and Warranties of Qualified Agency.**

The Qualified Agency represents and warrants, as follows:

(1) the Qualified Agency is a validly existing agency of the State authorized to operate under the Agency Act;

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

(3) the Qualified Agency has duly authorized the execution and delivery of the Project Financing Documents and the performance of its obligations thereunder;

(4) 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 Qualified Agency 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 Qualified Agency is subject or by which the Qualified Agency or any of its property are bound;

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

(6) the Project Financing Documents, when duly executed and delivered by the Qualified Agency, as appropriate, will constitute legal, valid, and binding obligations of the Qualified Agency.

## ARTICLE III

### THE PROJECT

#### **SECTION 3.01 Disbursements from Project Fund.**

(a) The Qualified Agency may cause disbursements to be made from the applicable subaccount of the Project Fund in accordance with any written contract with a grant recipient, this Financing Agreement, the Authorizing Law and the Resolution.

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

(c) The Qualified Agency acknowledges and agrees that interest earned in funds contained in the Project Fund may be used to pay interest payments, if any, on the Notes.

(d) To obtain a disbursement of funds from the Project Fund for the payment of Project Costs, the Qualified Agency shall submit to the Authority, not later than the Business Day immediately preceding the disbursement date, a properly completed Disbursement Certificate. Subject to Subsection (e) of this Section 3.06, upon determining that the submitted Disbursement Certificate has been properly completed, the Executive Director shall cause the Comptroller to transfer funds in the Project Fund to the appropriate fund(s) of the Qualified Agency in the amount(s) set forth in the Disbursement Certificate. The Qualified Agency shall apply the funds so transferred to the payment of Project Costs.

(e) Before a disbursement from the Project Fund may be made with respect to any Project Component in excess of the estimated cost of such component shown on Exhibit "A" of this Financing Agreement, the Qualified Agency shall give notice to the Executive Director identifying such Project Component and stating the amount of such excess.

(f) In the event that the Authority determines that the Qualified Agency has breached any material representation, warranty, or agreement in this Financing Agreement, the Authority, in its discretion, may suspend further disbursement of funds from the Project Fund if it is advised in writing by the Texas Attorney General that (1) such suspension is lawful, and (2) such breach constitutes a breach of this Financing Agreement and such suspension may commence not sooner than the 30th day after the date of delivery to an Authorized Agency Representative of notice of such suspension, and may continue until such breach is cured or is waived by the Executive Director. If such breach is not cured or waived within 90 days after the date such suspension commenced, the Authority may apply any remaining funds in the Project Fund allocated to the payment of Project Costs in the manner permitted by the Resolution and law.

#### **SECTION 3.02 Status Reports.**

Not later than the 15th day of each month the Qualified Agency shall prepare and deliver to the Executive Director a status report, containing the information set forth in Exhibit "E" to this

Financing Agreement, covering the preceding calendar month. At other times the Qualified Agency shall provide the Executive Director, upon request, with any information available to the Qualified Agency regarding the expenditure of funds disbursed to the Qualified Agency from the Project Fund.

**SECTION 3.03 Authority Not Responsible for Project.**

(a) The Authority has no responsibility for the Project.

(b) If the amounts in Project Fund are insufficient for the payment of all of the Project Costs, the Authority is not responsible for the payment of any Project Costs that cannot be paid from the Project Fund.

**SECTION 3.04 Necessity for Project.**

The Qualified Agency represents to the Authority that, as of the Closing Date the provision of the Project in accordance with the Project completion schedule attached as Exhibit "B" hereto is necessary in order for the Qualified Agency to effectively carry out its lawful duties and functions.

**ARTICLE IV**

**THE NOTES**

**SECTION 4.01 Issuance of the Notes.**

The Authority shall use its best efforts to issue and sell the Notes from time to time in an amount that is sufficient for the Project to be made available in the Project Fund for the payment of the Project Costs.

**SECTION 4.02 Cooperation by Qualified Agency.**

The Qualified Agency shall take the action(s), enter into the agreement(s), provide the certification(s) contemplated by this Financing Agreement, and otherwise cooperate with the Authority and its agents, to effect the lawful issuance and administration of the Notes under this Financing Agreement.

**SECTION 4.03 Maintaining Tax-Exempt Status of the Tax-Exempt Notes.**

(a) Not to Cause Interest to Become Taxable. (a) The Qualified Agency will at all times do and perform all acts and things within its power and authority necessary to comply with each applicable requirement of Section 103 and Sections 141 through 150 of the Code.

(b) The Qualified Agency covenants to refrain from any action which would adversely affect, or to take such action to assure, the treatment of the Tax-Exempt Notes as obligations described in section 103 of the Code, the interest on which is not includable in the "gross

income" of the holder for purposes of federal income taxation. In furtherance thereof, the Qualified Agency covenants as follows:

(i) to take any action to assure that no more than 10 percent of the Proceeds of the Tax-Exempt Notes (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of such Proceeds are so used, such amounts, whether or not received by the Qualified Agency, with respect to such private business use, do not, under the terms of the Resolution or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Notes, in contravention of section 141(b)(2) of the Code;

(ii) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds 5 percent of the proceeds of the Notes less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(iii) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Notes (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(iv) to take any action to assure that no more than 5 percent of the Proceeds of the Tax-Exempt Notes are used to provide any output facility (other than a facility for furnishing water) with respect to which there is any "private business use" as more fully set forth in section 141(b)(3) of the Code;

(v) to refrain from taking any action which would otherwise result in the Tax-Exempt Notes being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(vi) to refrain from taking any action that would result in the Tax-Exempt Notes being "federally guaranteed" within the meaning of section 149(b) of the Code;

(vii) to refrain from using any portion of the proceeds of the Tax-Exempt Notes, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Tax-Exempt Notes, other than investment property acquired with -

(A) proceeds of the Tax-Exempt Notes invested for a reasonable temporary period of 3 years or less until such proceeds are needed for the purpose for which the notes are issued;

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations; and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Tax-Exempt Notes; and

(viii) to otherwise restrict the use of the proceeds of the Tax-Exempt Notes or amounts treated as proceeds of the Tax-Exempt Notes as may be necessary, so that the Tax-Exempt Notes do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage), section 149(g) of the Code (relating to hedge bonds), and, to the extent applicable, section 149(d) of the Code (relating to advance refundings).

(c) The Qualified Agency will account for the expenditure of Sale Proceeds and Investment Proceeds on its books and records in accordance with the requirements of the Code. The Qualified Agency recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the Authority recognizes that in order for proceeds to be expended under the Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Tax-Exempt Notes, or (2) the date the Tax-Exempt Notes are retired. The Qualified Agency covenants and agrees to obtain the advice of Bond Counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Tax-Exempt Notes. For purposes hereof, the Qualified Agency shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability of interest on any Tax-Exempt Note from the gross income for federal income tax purposes.

(d) The Qualified Agency shall not, expend, or permit to be expended, the proceeds of the Tax-Exempt Notes in any manner inconsistent with its reasonable expectations as certified in the Federal Tax Certificates to be executed from time to time with respect to the Tax-Exempt Notes; provided, however, that the Qualified Agency may expend proceeds of the Tax-Exempt Notes in any manner if the Qualified Agency first obtains an unqualified opinion of Bond Counsel that such expenditure will not adversely effect the exemption from federal income taxation of interest paid on the Tax-Exempt Notes.

**SECTION 4.04 OMITTED.**

**SECTION 4.05 Disclosure Documents.**

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

(b) The Qualified Agency shall provide the Authority with certification of an Authorized Agency Representative to the effect that the information contained in the Disclosure Documents provided by the Qualified Agency is accurate and does not omit any information necessary to make the information provided not misleading.

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

**ARTICLE V**

**PARTICULAR AGREEMENTS**

**SECTION 5.01 Recordkeeping.**

(a) The Executive Director shall retain, as official records of the Authority, all Disbursement Certificates, if any, and all Project status reports submitted by the Qualified Agency pursuant to this Financing Agreement.

(b) The Qualified Agency shall retain, as official records of the Qualified Agency, all materials, records, and information necessary to confirm the Qualified Agency's compliance with the provisions of Section 4.03 for a period beginning on the Closing Date and ending three years after the date the Notes are no longer outstanding.

**SECTION 5.02 Availability of Other Funding.**

As of the Closing Date, the Qualified Agency represents that no funds (other than funds derived from Note proceeds) have been appropriated to the Qualified Agency for the biennium in which the Notes are issued for application to the payment of Project Costs that are to be paid with the proceeds of the Notes. It is understood and agreed, however, that the Qualified Agency may apply funds other than proceeds of the Notes for payment of Project Costs in compliance with applicable law.

**SECTION 5.03 Real Property.**

(1) The Qualified Agency represents that, subject to applicable law, it does not intend to acquire real property at a purchase price in excess of \$25,000 unless:

(2) such property is suitable for the Qualified Agency' intended use and has no defect or condition (including, without limitation, pollution or hazardous waste defects) that would jeopardize such use; or

(3) the Qualified Agency determines that, notwithstanding such nonsuitability, defect, or condition (as applicable), such acquisition is appropriate.

**SECTION 5.04 Title Insurance.**

The Qualified Agency represents that, subject to applicable law, it does not intend to acquire any real property at a purchase price in excess of \$25,000 unless:

(1) the Qualified Agency' title to such property is insured by title insurance in an amount not less than the purchase price paid by the Qualified Agency, subject to standard printed exceptions, with only those changes thereto normally required by a prudent purchaser; or

(2) the Qualified Agency determines that the acquisition of such real property without such title insurance is appropriate.

**ARTICLE VI**

**MISCELLANEOUS PROVISIONS**

**SECTION 6.01 Term of Agreement.**

This Financing Agreement shall take effect upon its delivery by the parties hereto and shall remain in effect until the Notes have been fully paid or until no more periodic status reports are required from the Qualified Agency under this Financing Agreement, whichever is the later to occur.

**SECTION 6.02 Amendment.**

The Authority and the Qualified Agency, by mutual agreement, may amend this Financing Agreement if, before the amendment takes effect:

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

- (2) either of the following requirements is satisfied:
- (A) the Authority obtains an opinion of Bond Counsel to the effect that such amendment will not constitute an Event of Taxability, violate the Authorizing Law or the Resolution, or adversely affect the rights of the owners of the Notes thereunder, or
- (B) the owners of at least a majority in aggregate principal amount of the outstanding Notes affected by such amendment consent thereto.

**SECTION 6.03 Notices and Other Communications.**

(a) Notices, certificates, approvals, and other communications under this Financing Agreement shall be in writing and delivered by United States mail, postage paid, by telex, telegram, or other electronic transmission, or by express or personal delivery, addressed as follows:

- (1) if to the Qualified Agency:

Cancer Prevention and Research Institute of Texas  
P. O. Box 12097  
Austin, TX 78711  
Attention: Executive Director

- (2) if to the Authority:

Texas Public Finance Authority  
300 West 15th Street, Suite 411  
Austin, Texas 78701  
Attention: Executive Director

- (3) if to the Comptroller:

Comptroller of Public Accounts of the State of Texas  
208 East 10<sup>th</sup> Street  
Austin, Texas 78701  
Attention: Chief Investment Officer

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

(c) Any communication delivered by mail in compliance with this section is deemed to have been delivered as of the date of deposit in the mail.



(d) A provision of this Financing Agreement 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 6.04 Exclusive Benefit.**

This Financing Agreement shall inure to the exclusive benefit of and be binding on the Authority, the Qualified Agency, and their respective successors.

**SECTION 6.05 Severability.**

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

**SECTION 6.06 Counterparts.**

This Financing Agreement 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 6.07 Governing Law.**


This Financing Agreement shall be governed by and construed in accordance with the laws of the State.

**IN WITNESS WHEREOF**, the parties have caused this Financing Agreement to be executed by their respective duly authorized officers as of the date first above written.

**TEXAS PUBLIC FINANCE AUTHORITY**

By:   
\_\_\_\_\_  
Dwight Burns  
Executive Director

**CANCER PREVENTION AND RESEARCH  
INSTITUTE OF TEXAS**

By:   
\_\_\_\_\_  
William Gimson  
Executive Director

**EXHIBIT A  
TO THE  
FINANCING AGREEMENT**

**DESCRIPTION OF THE PROJECT**

**(PREPARED BY TPFA FROM INFORMATION INCLUDED  
IN AGENCY'S REQUEST FOR FINANCING AS MAY BE  
MODIFIED OR SUPPLEMENTED FROM TIME TO TIME)**

| <b><u>PROJECT COMPONENTS</u></b> | <b><u>ESTIMATED COST</u></b> | <b><u>ESTIMATED USEFUL LIFE</u></b> |
|----------------------------------|------------------------------|-------------------------------------|
| Prevention and Research Grants   | \$217,008,477                | _____ years*                        |
| Institute Operations             | \$ 7,991,523                 | _____ years*                        |

\_\_\_\_\_  
\*If applicable.

**EXHIBIT B  
TO THE  
FINANCING AGREEMENT**

**PROJECT SCHEDULE**

**(PREPARED BY TPFA FROM THE EXPENDITURE SCHEDULE INCLUDED IN  
AGENCY'S REQUEST FOR FINANCING; GENERALLY, THE EXPENDITURE  
PERIODS ARE CONSECUTIVE SIX-MONTH PERIODS TO A 24 MONTH TOTAL TO  
FOLLOW THE PROJECT SPENDING REQUIREMENTS FOR EXEMPTION FROM  
ARBITRAGE REBATE)**

(See Attached)

**Cancer Prevention and Research Institute of Texas**

**Estimated Request for Financing**

**Fiscal Year 2010**

|  | <u>September</u>     | <u>October</u> | <u>November</u> | <u>December</u> | <u>January</u>       | <u>February</u> | <u>March</u> | <u>April</u> | <u>May</u>            | <u>June</u> | <u>July</u> | <u>August</u> | <u>Total</u>          |
|--|----------------------|----------------|-----------------|-----------------|----------------------|-----------------|--------------|--------------|-----------------------|-------------|-------------|---------------|-----------------------|
| Bond proceeds for Institute Operations           | \$ 7,991,523         | \$ -           | \$ -            | \$ -            | \$ -                 | \$ -            | \$ -         | \$ -         | \$ -                  | \$ -        | \$ -        | \$ -          | \$ 7,991,523          |
| Bond proceeds for Prevention and Research Grants | \$ 3,744,749         | \$ -           | \$ -            | \$ -            | \$ 70,000,000        | \$ -            | \$ -         | \$ -         | \$ 143,263,728        | \$ -        | \$ -        | \$ -          | \$ 217,008,477        |
| <b>Total (cumulative)</b>                        | <b>\$ 11,736,272</b> | <b>\$ -</b>    | <b>\$ -</b>     | <b>\$ -</b>     | <b>\$ 70,000,000</b> | <b>\$ -</b>     | <b>\$ -</b>  | <b>\$ -</b>  | <b>\$ 143,263,728</b> | <b>\$ -</b> | <b>\$ -</b> | <b>\$ -</b>   | <b>\$ 225,000,000</b> |

**Fiscal Year 2011**

|  | <u>September</u>      | <u>October</u> | <u>November</u> | <u>December</u> | <u>January</u> | <u>February</u>       | <u>March</u> | <u>April</u> | <u>May</u>  | <u>June</u> | <u>July</u> | <u>August</u> | <u>Total</u>          |
|--|-----------------------|----------------|-----------------|-----------------|----------------|-----------------------|--------------|--------------|-------------|-------------|-------------|---------------|-----------------------|
| Bond proceeds for Institute Operations           | \$ 7,500,000          | \$ -           | \$ -            | \$ -            | \$ -           | \$ -                  | \$ -         | \$ -         | \$ -        | \$ -        | \$ -        | \$ -          | \$ 7,500,000          |
| Bond proceeds for Prevention and Research Grants | \$ 109,000,000        | \$ -           | \$ -            | \$ -            | \$ -           | \$ 108,500,000        | \$ -         | \$ -         | \$ -        | \$ -        | \$ -        | \$ -          | \$ 217,500,000        |
| <b>Total (cumulative)</b>                        | <b>\$ 116,500,000</b> | <b>\$ -</b>    | <b>\$ -</b>     | <b>\$ -</b>     | <b>\$ -</b>    | <b>\$ 108,500,000</b> | <b>\$ -</b>  | <b>\$ -</b>  | <b>\$ -</b> | <b>\$ -</b> | <b>\$ -</b> | <b>\$ -</b>   | <b>\$ 226,000,000</b> |

**EXHIBIT C  
TO THE  
FINANCING AGREEMENT**

**GOVERNMENTAL PROJECT APPROVALS**

As of the Closing Date, the following licenses, permits, and other governmental approvals necessary to complete the Project have not been obtained (Describe each such approval (e.g., utility easement), stating for each (1) the identity of the Project facility (or facilities) for which such approval is required, (2) the primary requirements necessary to obtain such approval, and (3) the date that such approval is expected to be obtained):

None.

**EXHIBIT D  
TO THE  
FINANCING AGREEMENT**

**FORM OF DISBURSEMENT CERTIFICATE**

**DISBURSEMENT CERTIFICATE**

The undersigned hereby certifies, on behalf of the \_\_\_\_\_ (the "Qualified Agency"),  
as follows:

(a) The capitalized terms in this Certificate that are not herein defined shall have the meanings defined in the Financing Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_, between the Qualified Agency and the Texas Public Finance Authority.

(b) The Qualified Agency (Agency No. [\_\_\_\_]) requests disbursement from the Project Fund to pay Project Costs in the aggregate amount of \$ \_\_\_\_\_. The aggregate of all disbursements (including this disbursement) from the Project Fund requested by the Qualified Agency to date is \$ \_\_\_\_\_.

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

(d) The Qualified Agency reasonably expects to submit payment vouchers, in the aggregate amount of the disbursements requested by this Certificate, for the payment of the Project Costs for which disbursement is requested.

(e) 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.

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

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



**EXHIBIT E  
TO THE  
FINANCING AGREEMENT**

**MONTHLY STATUS REPORT INFORMATION**

The monthly status report prepared by the Qualified Agency pursuant to this Financing Agreement 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 were first financed hereunder;
- (2) fund number(s);
- (3) the budget amount for the Project (including adjustments, if any);
- (4) description of work category;
- (5) amount expended for reporting month;
- (6) total amount expended to date;
- (7) amount encumbered;
- (8) available balance;
- (9) percent work complete, if applicable;
- (10) percent funds expended; and
- (11) narrative identifying any problems (including, without limitation, delays and cost overruns) and indicating whether such problems will substantially alter the work schedule or costs.
- (12) identify any use of the Project by any Person other than a state or local governmental unit.