
FINANCING AGREEMENT

between

TEXAS PUBLIC FINANCE AUTHORITY

and

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Pertaining to
Texas Public Finance Authority
State of Texas General Obligation and Refunding Bonds, Series 2011

Dated as of July 1, 2011

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FINANCING AGREEMENT

FINANCING AGREEMENT, dated as of July 1, 2011, between the TEXAS PUBLIC FINANCE AUTHORITY (the “Authority”) and the TEXAS DEPARTMENT OF CRIMINAL JUSTICE (the “Qualified Agency”) to provide for the financing of certain projects related to the Texas Public Finance Authority State of Texas General Obligation and Refunding Bonds, Series 2011 (the “Bonds”) issued pursuant to a resolution adopted by the Board of Directors of the Authority on July 7, 2011 (the “Resolution”);

WITNESSETH:

WHEREAS, the Authority is authorized to provide financing of certain projects (hereinafter defined) for certain agencies of the State of Texas through the issuance of the Bonds. Pursuant to certain provisions of the Texas Constitution and other statutory and regulatory authorities including, but not limited to, Article III, Section 50-g of the Texas Constitution, Chapters 1201, 1232, 1371 and 1401, Texas Government Code, and any regulations promulgated by the Authority thereunder (collectively, the “Authorizing Law”);

WHEREAS, one or more projects of the Qualified Agency have been authorized in appropriations by the Legislature of the State of Texas;

WHEREAS, the parties desire to provide for the financing by the Authority of certain 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 493, Texas Government Code, as amended.

Appropriation Act – Senate Bill 1, an Act of the 81st Legislature, Regular Session (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 10, Title 34, Texas Administrative Code.

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.

Available Construction Proceeds - means Proceeds other than Proceeds used to refund the obligations refunded by the Bonds (if any) and to pay issuance costs. For purposes of determining compliance with the spending requirements as of the end of each of the first three spending periods, available construction proceeds include the amount of future earnings that the Qualified Agency reasonably expected as of the issue date.

Board - the Board of Directors of the Authority.

Bond Counsel - any law firm or firms experienced in matters relating to the issuance of tax-exempt obligations, which firm or firms are engaged by the Authority to render services to the Authority as bond counsel.

Bonds - the "Texas Public Finance Authority State of Texas General Obligation and Refunding Bonds, Series 2011" authorized by the Resolution.

Business Day - any day on which the Comptroller is open for business and:

(1) while the Authority is the Paying Agent/Registrar, on which the Authority is open for business at its principal business office; or

(2) while a Person other than the Authority is the Paying Agent/Registrar, on which financial institutions in the city where the principal corporate trust office of the Paying Agent/Registrar is located are not authorized by law or executive order to close.

Closing - with respect to the Bonds, the concurrent delivery of such Bonds to, or upon the order of, the initial purchaser in exchange for payment therefor.

Closing Date - the date of the Closing.

Code - the Internal Revenue Code of 1986, as amended, by all legislation, if any, enacted on or before the date on which the Bonds are issued.

Comptroller - the Comptroller of Public Accounts of the State of Texas 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.

Construction Expenditures - means capital expenditures that are allocable to the cost of real property or constructed personal property. Except as provided below, construction expenditures do not include expenditures for acquisitions of interests in land or other existing

real property. Expenditures are not for the acquisition of an interest in existing real property other than land if the contract between the seller and the Qualified Agency requires the seller to build or install the property (e.g., a turnkey contract), but only to the extent that the property has not been built or installed at the time the parties enter into the contract. Constructed personal property means tangible personal property (or, if acquired pursuant to a single acquisition contract, properties) or specially developed computer software if: (i) a substantial portion of the property or properties is completed more than 6 months after the earlier of the date construction or rehabilitation commenced and the date the Qualified Agency entered into an acquisition contract; (ii) based on the reasonable expectations of the Qualified Agency, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the Qualified Agency) could not have occurred within that 6-month period; and (iii) if the Qualified Agency itself builds or rehabilitates the property, not more than 75 percent of the capitalizable cost is attributable to property acquired by the Qualified Agency (e.g., components, raw materials, and other supplies). Specially developed computer software means any programs or routines used to cause a computer to perform a desired task or set of tasks, and the documentation required to describe and maintain those programs, provided that the software is specially developed and is functionally related and subordinate to real property or other constructed personal property.

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 Bonds.

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 Preliminary Official Statement, the Official Statement and any amendments thereto.

Event of Taxability - any act or omission that could adversely cause any amount payable with respect to any of the Bonds that is treated as interest under the Code not to be excludable under section 103(a) of the Code from the gross income of the owner of the Bond.

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.

Facility Contract - any contract, entered into by the Qualified Agency after the effective date of this Financing Agreement, for the design, engineering, acquisition, construction, equipping, repair, or renovation of any facilities financed for the Qualified Agency in whole or part with proceeds of the Bonds.

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 Bond Obligations.

Interest Payment Date - each April 1 and October 1, commencing April 1, 2012, as the dates on which interest on the Bonds shall be paid semiannually.

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

Legislative Budget Board - the joint committee of the Legislature that develops recommendations for legislative appropriations for the state agencies.

Legislature - the Legislature of the State.

Memorandum - the Memorandum of Understanding, dated as of December 2, 2009, between the Authority and the Qualified Agency, and any amendments thereto.

Official Statement - the final official statement authorized by the Authority to be used in connection with the sale of the Bonds.

Plans and Specifications - the plans and specifications for the Project Component(s), as amended or supplemented.

Preliminary Official Statement - the preliminary official statement approved by the Board and distributed in connection with the offering for sale of the Bonds.

Proceeds - means any Sale Proceeds and Investment Proceeds of the Bonds that are attributable to financing the Project.

Project - collectively, the Project Components.

Project Completion Amount - the aggregate amount of the cost of all of the Project Components, as set forth in Exhibit A to this Financing Agreement.

Project Completion Certificate - a certificate of an Authorized Agency Representative delivered on behalf of the Qualified Agency, pursuant to this Financing Agreement, to the effect that the Project has been completed (or that no further Proceeds are required for the payment of Project Costs), in substantially the form set forth in Exhibit F to this Financing Agreement.

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

Project Completion Schedule - the schedule projecting the rate of expenditure of Proceeds of the Bonds for the payment of Project Costs which is set forth in Exhibit B to this Financing Agreement.

Project Component - each respective item (or part of an item) in the Appropriation Act that has been approved to be financed with Proceeds of the Bonds, as described in Exhibit A to this Financing Agreement.

Project Costs - any costs associated with the Project that are authorized under the Authorizing Law to be paid with Proceeds of the Bonds.

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 Bonds, including (without limitation) the Memorandum, the Request for Financing, this Financing Agreement, each Disbursement Certificate, any Project Substitution Certificate, and the Project Completion Certificate.

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

Project Substitution Certificate - a certificate of an Authorized Agency Representative to the effect that a Project Component is to be substituted with another authorized project, in substantially the form set forth in Exhibit G to this Financing Agreement.

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

Regulations - the proposed, temporary or final Income Tax Regulations applicable to the Bonds pursuant to sections 141 through 150 of 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. 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 pursuant to sections 141 through 150 of the Code, as applicable to the Bonds.

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 Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the Proceeds of the Bonds 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 July 7, 2011, pursuant to which the Bonds are authorized to be issued, and any amendments and supplements thereto.

Sale Proceeds - has the meaning set forth in section 1.148-2(b) of the Regulations and generally consists of any amounts actually or constructively received from the sale (or other disposition) of any Bond, including amounts used to pay underwriters’ discount or compensation and accrued interest other than pre-issuance accrued interest. Sale Proceeds also include amounts from the sale of a right that is associated with any Bond and is described in section 1.148-4(b)(4) of the Regulations.

State - the State of Texas.

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 Bonds, 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.

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 Authorization for Project.

(a) The Qualified Agency represents that the Project has been authorized by the Appropriation Act or other statute and that all of the Project Costs to be paid with Proceeds of

the Bonds will be incurred for the acquisition, construction, equipping, major repair, or renovation of facilities and will otherwise be lawful expenditures of the Qualified Agency.

(b) The Qualified Agency represents that the description of each Project Component set forth in Exhibit A to this Financing Agreement is accurate.

(c) The Qualified Agency represents that it has submitted specific plans for the Project to the Legislative Budget Board and, if required by the Appropriation Act, such plans have been approved by the Legislative Budget Board.

SECTION 3.02 Plans and Specifications.

(a) The Qualified Agency shall cause the Plans and Specifications to be prepared and shall maintain the Plans and Specifications with its official records.

(b) The Authority and its authorized agents may inspect the Plans and Specifications at reasonable times.

SECTION 3.03 Project Completion Schedule.

(a) As of the Closing Date, the Qualified Agency reasonably expects that the Project Completion Amount will be expended within the time periods set forth in Exhibit B hereto. The Qualified Agency 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) Upon becoming aware of any circumstances that will result in a deviation from Exhibit B hereto of \$1,000,000 or more, the Qualified Agency shall notify the Executive Director of the amount and nature of such deviation.

(c) Upon becoming aware of any circumstances that will result in the expenditure for Project Costs in any "Expenditure Period" (as set forth in Exhibit B hereto) of an aggregate amount that is less than the amount set forth in Exhibit B hereto for such Expenditure Period, the Qualified Agency shall notify the Executive Director of (1) such aggregate expenditure amount, and (2) the reason(s) that such expenditure amount will be less than the amount set forth in Exhibit B hereto.

SECTION 3.04 Construction and Acquisition of Project.

(a) The Qualified Agency shall cause the acquisition, construction, equipping, repair, and/or renovation of the Project to be completed with due diligence substantially in accordance with the Plans and Specifications and in a good and workman-like manner.

(b) The Qualified Agency represents that, except for an amount not in excess of five percent of the Sale Proceeds and that are costs directly related to the Project, all of the Project Completion Amount will be expended to pay Project Costs constituting capital expenditures.

(c) The Qualified Agency may shift its use of Proceeds among Project Components to the extent permitted by law so long as such shift of use does not constitute an Event of Taxability. The Authority may require the Qualified Agency to obtain an opinion of Bond Counsel that such shift does not constitute an Event of Taxability.

SECTION 3.05 Licenses and Permits.

The Qualified Agency represents that it has obtained all necessary licenses, permits, and other governmental approvals necessary to complete the Project, except for those (if any) described in Exhibit C to this Financing Agreement.

SECTION 3.06 Disbursements from Project Fund.

(a) The Qualified Agency may cause disbursements to be made from the Project Fund in accordance with contracts for the Project and with this Financing Agreement 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 investment earnings contained in the Project Fund may only be used to pay Project Costs or to pay interest payments, if any, on the Bonds.

(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) Disbursements from the Project Fund for the payment of Project Costs shall not exceed, in the aggregate, the Project Completion Amount without the prior approval of the Executive Director (which approval shall be based on availability of funds and legal authorization).

(f) 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.

(g) 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.

(h) To the extent required by law, the Qualified Agency has submitted a master plan for construction of its facilities and shall periodically revise the master plan in accordance with such law.

SECTION 3.07 Status Reports.

Not later than the 15th day of each month, through the month following the month in which the Project Completion Date occurs, 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 (whether before or after the Project Completion Date), 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 or the condition or use of the Project.

SECTION 3.08 Inspection of Project.

The Authority and its authorized agents, at reasonable times before and after completion of the Project, may enter on and inspect the Project and examine any records of the Qualified Agency relating to the Project.

SECTION 3.09 Completion of Project.

Upon the completion of the Project (or when no further proceeds of the Bonds are to be expended for Project Costs), the Qualified Agency shall deliver to the Executive Director a properly completed Project Completion Certificate.

SECTION 3.10 Use of Project.

(a) The Qualified Agency may use the Project for any lawful purpose so long as such use does not constitute an Event of Taxability.

(b) The Qualified Agency shall not lease any part of the Project to, or permit any part of the Project to be operated or otherwise used by, an entity other than an agency or political subdivision of the State without the prior approval of the Executive Director. The Authority shall direct the Executive Director to approve any proposed arrangement for use of the Project (or a part thereof) by a nongovernmental entity upon obtaining an opinion of Bond Counsel to the effect that such arrangement will not constitute an Event of Taxability. Any agreement or understanding that allows any other agency or political subdivision of the State to use all or any portion of the Project shall limit such use in a manner sufficient to prevent an Event of Taxability.

SECTION 3.11 Authority Not Responsible for Project.

(a) The Authority has no responsibility for the acquisition, construction, equipping, repair, or renovation of the Project or for the operation or maintenance of 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 3.12 Necessity for Project.

The Qualified Agency represents to the Authority that, as of the Closing Date:

(a) the provision of the Project in accordance with the Project Completion Schedule is necessary in order for the Qualified Agency to effectively carry out its lawful duties and functions; and

(b) for any construction project, the Qualified Agency expects that it will use the Project for the purposes for which it is designed for the entire useful economic life of the Project as long as any of the Bonds are outstanding.

ARTICLE IV

THE BONDS

SECTION 4.01 Issuance of the Bonds.

The Authority shall use its best efforts to issue and sell the Bonds in an amount that is sufficient for the Project Completion Amount 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 agreements, 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 Bonds under this Financing Agreement.

SECTION 4.03 Maintaining the Tax-Exempt Status of the Bonds.

The Qualified Agency will not take, or omit to take, any action that will adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds, and, in the event of such action or omission, it will use all reasonable efforts to cure the effect of such action or omission. With the intent not to limit the generality of the foregoing, the Qualified Agency covenants and agrees that it will comply with the covenants set forth below prior to the final maturity of the Bonds, unless it has received a written opinion of nationally recognized bond counsel to the effect that failure to comply with such covenant will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(a) No Private Payments. No portion of the payment of the debt service on the Bonds will be directly or indirectly derived from payments (whether or not to the Qualified Agency or any related party) in respect of property, or borrowed money, used or to be used for a private business use. Furthermore, no portion of the payment of the debt service on the Bonds will be directly or indirectly secured by any interest in property used or to be used for a private business use or payments in respect of property used or to be used for a private business use. The Qualified Agency will not impose or accept, directly or indirectly, any charge or other payment with respect to any Proceeds used in any trade or business of a nongovernmental person. For purposes of determining use of Proceeds, the Qualified Agency will apply the rules set forth in Section 4.03(b) below.

(b) No Private Use. The Qualified Agency will not use or permit any of the Proceeds of the Bonds to be used, directly or indirectly, in any trade or business of a nongovernmental person.

(i) For purposes of determining use, the Qualified Agency will apply rules set forth in applicable Regulations and Revenue Procedures promulgated by the Internal Revenue Service, including, among others, the following rules: (A) any activity carried on by a person other than a natural person or a state or local governmental unit will be treated as a trade or business of a nongovernmental person; provided that, such use will be treated as general public use (and not use in a trade or business) if the Project is intended to be available, and is in fact reasonably available, for use on the same basis by natural persons not engaged in a trade or business; (B) the use of all or any portion of the Project is treated as the direct use of Proceeds; (C) a nongovernmental person will be treated as a private business user of Proceeds of the Bonds as a result of ownership, actual or beneficial use of the Proceeds pursuant to a lease, or a management or incentive payment contract, or certain other arrangements such as a take-or-pay or other output-type contract; and (D) the private business use test is met if a nongovernmental person has any special legal entitlement to use directly or indirectly all or any portion of the Project.

(ii) In the case of any portion of the Project that is not available for use by the general public, the Qualified Agency will not permit any special economic benefit to be provided to any nongovernmental person. In determining whether there is a special economic benefit the following factors will be taken into account: (A) whether the portion of the Project in question is functionally related or physically proximate to property used in the trade or business of a nongovernmental person; (B) whether only a small number of nongovernmental persons receive the special economic benefit; and (C) whether the cost of the portion of the Project in question is treated as depreciable for federal income tax purposes by any nongovernmental person.

(iii) For purposes of this section, a management contract is a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion of, or any function of, the Project. The following arrangements generally are not treated as management contracts that give rise to private business use: (A) contracts for services that are solely incidental to the primary governmental function or functions of all or a

portion of the Project in question (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services); (B) a contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and (C) a contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(iv) For purposes of this section, use by the federal government and its agencies and instrumentalities is considered use of a nongovernmental person.

(v) For purposes of determining use, research contracts with nongovernmental persons that do not comply with the requirements in applicable Revenue Procedures promulgated by the Internal Revenue Service constitute use in a trade or business of a nongovernmental person.

(c) Loans of Sale Proceeds. No portion of the Proceeds of the Bonds will be directly or indirectly used to make or finance a loan to any person other than a state or local governmental unit. For purposes of the foregoing covenant, Proceeds are considered to be “loaned” to a person or entity if (1) all or any portion of the Project is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes, (2) capacity in or service from all or any portion of the Project is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement, or (3) indirect benefits, or burdens and benefits of ownership, of such Proceeds or all or any portion of the Project are otherwise transferred in a transaction which is the economic equivalent of a loan.

(d) No-Arbitrage Covenant. The Qualified Agency will not, at any time prior to the final maturity of any Bond, direct or permit the investment (or the use of Gross Proceeds to replace money so invested), if as a result of such investment the yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the yield on any issue of the Bonds to stated maturity, except as permitted by section 148 of the Code and Regulations thereunder.

SECTION 4.04 Arbitrage Rebate.

(a) The Qualified Agency shall timely take such lawful action as requested by the Executive Director to avoid or mitigate the obligation to make payments to the United States government under section 148(f) of the Code, unless an Authorized Agency Representative certifies to the Authority that the requested action is not practicable.

(b) If the Qualified Agency fails to cause Proceeds to be expended within the time periods set forth in the Project Completion Schedule, the Executive Director may inquire as to the nature of such failure and the extent to which it is expected to continue.

(c) The Qualified Agency reasonably expects to use at least seventy-five percent (75%) of the “available construction proceeds” of the Bonds for “construction expenditures,” as such terms are defined in sections 1.148-7(i) and 1.148-7(g) of the Regulations, respectively.

The Qualified Agency shall use its best efforts to expend all funds necessary to complete its Project within the two-year expenditure period set forth in section 148(f)(4)(C) of the Code as follows: (i) 10 percent of the funds within the 6-month period beginning on the date the Bonds are issued; (ii) 45 percent of the funds within the 1-year period beginning on such date; (iii) 75 percent of such funds within the 18-month period beginning of such date; and (iv) 100 percent of such funds within the 2-year period beginning on such date. If a portion of the Project Completion Amount 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 Qualified Agency, not later than the close of such period, shall notify the Executive Director of the amount of such unexpended funds and the purpose(s) for which such funds are being retained in the Project Fund after such period.

(d) The Qualified Agency has incurred or will incur within six months of the date hereof a binding obligation to a third party which is not subject to any contingencies within the control of the Qualified Agency or a related party pursuant to which the Qualified Agency is obligated to expend at least five percent of the Sale Proceeds of the Bonds allocated to the Qualified Agency on the Project. The Qualified Agency reasonably expects that work on or acquisition of the Project will proceed with due diligence to completion and that the Sale Proceeds of the Bonds allocated to the Qualified Agency will be expended on the Project with reasonable dispatch. The Qualified Agency reasonably expects that 85 percent of the Sale Proceeds of the Bonds allocated to the Qualified Agency will have been expended on the Project prior to the date that is three years after the Issue Date.

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 Bonds to rely on the information and certifications provided by the Qualified Agency under this section. The Bonds 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, the Project Completion Certificate, all Project Substitution

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 Sections 4.03 and 4.04 for a period beginning on the Closing Date and ending three years after the date the Bonds are no longer outstanding.

SECTION 5.02 Indemnification of Qualified Agency.

The Qualified Agency represents that, subject to applicable law, it intends that each Facility Contract providing for payment of goods or services exceeding \$25,000 will require indemnification of the Qualified Agency. The Qualified Agency will be provided with insurance, a surety bond, or other form of financial assurance, from a financially sound provider that assures performance under such Facility Contract with respect to such indemnification, unless the Qualified Agency determines that such financial assurance is not necessary or is required in a reduced amount.

SECTION 5.03 Availability of Other Funding.

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

SECTION 5.04 Real Property.

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:

- (1) such property is suitable for the Qualified Agency's intended use and has no defect or condition (including, without limitation, pollution or hazardous waste defects) that would jeopardize such use; or
- (2) the Qualified Agency determines that, notwithstanding such nonsuitability, defect, or condition (as applicable), such acquisition is appropriate.

SECTION 5.05 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's 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.

SECTION 5.06 Project Design.

The Qualified Agency represents that the Project has been (or will be) designed to satisfy all of the purposes that the Qualified Agency intends the Project to serve, and that the Qualified Agency has used (or will use) all reasonable efforts to design the Project so that the Project will be provided, and can be operated, at such reasonable cost as is consistent with applicable legal requirements and the sound business judgment of the Qualified Agency.

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 Bonds 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 Bonds thereunder, or

(B) the owners of at least a majority in aggregate principal amount of the outstanding Bonds 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:

Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004
Attention: Director, Legal Affairs

- (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 10th 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 Conflict with Memorandum.

In the event of a conflict between this Financing Agreement and the Memorandum, this Financing Agreement shall supersede the Memorandum to the extent of the conflict.

SECTION 6.07 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.

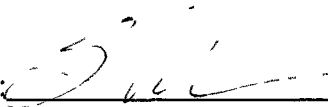
SECTION 6.08 Governing Law.

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

(SIGNATURE PAGE FOLLOWS)

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: 

Susan K. Durso
Interim Executive Director and General Counsel

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE

By: _____
Name:
Title:

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: _____
Susan K. Durso
Interim Executive Director and General Counsel

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE

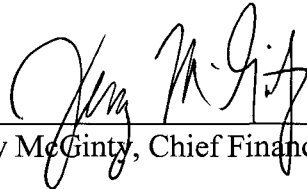
By:  _____
Jerry McGinty, Chief Financial Officer

EXHIBIT A
TO THE
FINANCING AGREEMENT

DESCRIPTION OF THE PROJECT

Repair or rehabilitation of TDCJ facilities:

<u>PROJECT COMPONENTS</u>	<u>ESTIMATED COST</u>	<u>ESTIMATED USEFUL LIFE</u>
Safety	\$1,755,000	20 years
Roofing	\$10,734,000	20 years
Infrastructure	\$1,414,000	25 years
Ventilation	\$5,686,000	15 years
Security	\$3,405,000	25 years
Facility Repair	<u>\$2,006,000</u>	20 years
Total	\$25,000,000	

EXHIBIT B
TO THE
FINANCING AGREEMENT

PROJECT COMPLETION SCHEDULE

<u>Expenditure Period</u>	<u>Project Expenditures</u>
September 2011	\$ 2,000,000
October 2011	\$ 3,000,000
November 2011	\$ 3,000,000
December 2011	\$ 3,000,000
January 2012	\$ 3,000,000
February 2012	\$ 3,000,000
March 2012	\$ 3,000,000
April 2012	\$ 3,000,000
May 2012	\$ <u>2,000,000</u>
Total	\$ <u>25,000,000</u>

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 TEXAS DEPARTMENT OF CRIMINAL JUSTICE (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 July 1, 2011, 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.

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE

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 Components (name, ID no., etc.) and the original date on which such Project Components were first financed hereunder;
- (2) fund number(s);
- (3) the budget amount for the Project Components (including adjustments, if any);
- (4) description of work category;
- (5) description of expenditures by category;
- (6) amount of expenditures by category;
- (7) amount expended for reporting month;
- (8) total amount expended to date;
- (9) amount encumbered;
- (10) available balance;
- (11) percent work complete;
- (12) percent funds expended;
- (13) 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
- (14) identify any use of the Project or facilities by any Person other than a state or local governmental unit.

EXHIBIT F
TO THE
FINANCING AGREEMENT

FORM OF PROJECT COMPLETION CERTIFICATE

PROJECT COMPLETION CERTIFICATE

The undersigned hereby certifies, on behalf of the TEXAS DEPARTMENT OF CRIMINAL JUSTICE (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 July 1, 2011, between the Qualified Agency and the Texas Public Finance Authority.

(b) The Project was completed on (or no further proceeds of the Bonds are 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 Qualified Agency.

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

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE

By: _____
Authorized Agency Representative

Date: _____

EXHIBIT G
TO THE
FINANCING AGREEMENT

FORM OF PROJECT SUBSTITUTION CERTIFICATE

The undersigned hereby certifies, on behalf of the TEXAS DEPARTMENT OF CRIMINAL JUSTICE (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 July 1, 2011, between the Qualified 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 substituted Project has received all required approvals for financing.

(d) 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 CRIMINAL
JUSTICE

By: _____
Authorized Agency Representative

Date: _____