

## LEASE

This Lease (this “Lease”) is made and entered into as of October 20, 2022 (the “Effective Date”) by and between Willacy County Public Facility Corporation, a Texas non-profit local government corporation (“Landlord”), whose address is 576 West Main, Room 145, Raymondville, Texas 78580, and Hidalgo County, Texas (“Tenant”), whose address is 100 E. Cano, 2<sup>nd</sup> Floor, Attn: County Judge, Edinburg, Texas 78539.

### SECTION I. DEFINITIONS

A. Specific Definitions. As used throughout this lease, the following terms have the following meanings:

- 1) “Landlord” means the Willacy County Public Facility Corporation
- 2) “Tenant” means Hidalgo County, Texas
- 3) “Premises” means all land, buildings and improvements comprising the Regional Detention Facility located at 1601 Buffalo Drive, Raymondville, Texas 78580, legally described on Exhibit A attached hereto.
- 4) “Purpose” means the operation of a county jail facility in compliance with Texas law.
- 5) “Tenant’s Notice Address” means 100 E. Cano, 2<sup>nd</sup> Floor, Attn: County Judge, Edinburg, Texas 78539.
- 6) “Initial Term” means the Fifty (50) year period commencing on the Commencement Date and ending on the date that is Fifty (50) years thereafter.
- 7) “Extension Term” means four (4) additional terms of ten (10) years each. Each Extension Term shall be deemed to be exercised by Tenant automatically unless Tenant provides Landlord with one hundred eighty (180) days written notice of its election not to so extend the Lease Term.
- 8) “Lease Term” shall mean the Initial Term and any Extension Term exercised by Tenant.
- 9) “Annual Rental” means the amounts set forth on Exhibit B attached hereto.
- 10) “Commencement Date” means November 1, 2022.
- 11) “Anniversary Date” means the date that is one year after the Commencement Date and every year thereafter on such date.
- 12) “Direct Tax Expenses” means all real property taxes and annual installments of real estate assessments, if any, on the buildings and land; personal property taxes on the personal property, if any, used in the occupancy of the Premises. The parties recognize that, during the Lease Term, the present real property tax may be wholly or partly replaced or supplemented by another form of tax. In such event, there shall be included within the definition of Direct Tax Expenses any such tax, levy, or assessment (other than federal, state, or city and county net income taxes or estate, gift or other similar taxes) that, now or in the future, and whether or not now customary or within the contemplation of the parties, may be charged to Landlord and is (i) levied upon or with respect to the possession, leasing, operation, management, or occupancy by Tenant of

the Premises or any portion of it; or (ii) levied upon or measured by the value of Tenant's Personal Property of leasehold improvements.

- 13) "C.P.I." means the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the U.S. Department of Labor, Bureau of Labor Statistics. If the C.P.I. is discontinued, any similar index published and recognized by the financial community as a substitute for the C.P.I. shall be utilized in its place.
- 14) "C.P.I. Adjustment" means an increase in the annual rental after year 25 of the Initial Term, determined by adding to the original annual rental as specified in Exhibit B for the given year an amount that represents a percentage of it equal to the percentage of increase in the C.P.I. for all items as of the commencement of the Initial Term. No adjustment shall be made that will reduce the annual rental as adjusted by any prior C.P.I. Adjustment.
- 15) "Governmental Approvals" means those approvals from governmental agencies necessary to fully operate a County jail facility with no less than 568 beds within the Premises, including but not limited to (i) certification of the Premises from the Texas Commission on Jail Standards, (ii) a certificate of occupancy from the City of Raymondville, and (iii) all other permits, approvals, or certifications from City, County, or State agencies.

B. *General Definitions.* As used throughout this Lease, the following words have the meanings set out after such words unless the context in which they appear clearly indicates otherwise.

(1) *Alteration.* Any addition or change to, or modification of, the Premises made by Tenant including, without limitation, the installation of fixtures, Tenant's Trade Fixtures and Tenant's Improvements as defined in this Lease.

(2) *Authorized representative.* Any officer, agent, employee, or independent contractor retained or employed by either party, acting within the authority given him or her by that party.

(3) *Damage.* Death, injury, deterioration, or loss to a person or injury, deterioration, or loss to property caused by another person's acts or omissions.

(4) *Damages.* Monetary compensation or indemnity that can be recovered in the courts by any person who has suffered damage to the person, property, or rights of such person through another's act or omission.

(5) *Destruction.* Any damage, as defined in this Lease, to or disfigurement of the Premises.

(6) *Encumbrance.* Any deed of trust, mortgage, or other written security device or agreement affecting the Premises, and the note or other obligation secured by it.

(7) *Expiration.* The coming to an end of the time specified in the Lease as its duration, including any extension of the term, if applicable.

(8) Good Condition. The good physical condition of the Premises and each portion of the Premises, including, without limitation, signs, windows, appurtenances. "In Good Condition" means first class, neat, and broom clean, and is equivalent to similar phrases referring to physical adequacy in appearance and for use.

(9) Law. Any judicial decision, constitution, statute, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the parties or the Premises, or both, in effect either at the time of execution of the Lease or at any time during the Lease Term, including, without limitation, any regulation or order of a quasi-official entity or body (such as, board of fire examiners or public utilities).

(10) Lender. Beneficiary, mortgagee, secured party, or other holder of an Encumbrance, as defined in this Lease.

(11) Lien. Charge imposed on the Premises by someone other than Landlord, by which the Premises are made security for the performance of an act. Most of the liens referred to in this Lease are mechanics' liens.

(12) Maintenance. Repairs, replacement, repainting and cleaning.

(13) Person. One or more human beings or legal entities or other artificial persons, including, without limitation, partnerships, corporations, trusts, estates, associations, and any combination of human beings and legal entities.

(14) Provision. Any term, agreement, covenant, condition, clause, qualification, restriction, reservation, or other stipulation in the Lease that defines or otherwise controls, establishes, or limits the performance required or permitted by either party.

(15) Restoration. Reconstruction, rebuilding, rehabilitation, and repairs that are necessary to return destroyed portions of the Premises and other property to substantially the same physical condition as they were in immediately before the destruction.

(16) Successor. Any assignee, transferee, personal representative, heir, or other person or entity succeeding lawfully, and pursuant to the provisions of this Lease, to the rights or obligations of either party.

(17) Tenant's Improvements. Any addition to or modification of the Premises made by Tenant before, at, or after Effective Date, including, without limitation, fixtures (but not including Tenant's Trade Fixtures, as defined in this Lease).

(18) Tenant's Personal Property. Tenant's equipment, furniture, merchandise, and movable property placed in the Premises by Tenant, including Tenant's Trade Fixtures, as defined in this Lease.

(19) Tenant's Trade Fixtures. Any property installed in or on the Premises by Tenant for purposes of trade, manufacture, ornament, or related use.

(20) Termination. The ending of the Lease Term for any reason before expiration, as defined in this Lease.

## SECTION II. DELIVERY OF POSSESSION

Landlord shall deliver possession of the Premises to Tenant on the Effective Date in its “As-Is,” “Where-Is,” “With All Faults” condition.

## SECTION III. LEASING AND PAYMENT OF ANNUAL RENTAL

Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Lease Term and for the Annual Rental. Tenant agrees to pay to Landlord each installment of Annual Rental, in advance on or before the Anniversary Date of each year of during the Lease Term with the Annual Rental for the first year of the Lease Term to be paid upon the Commencement Date.

The Annual Rental shall be paid by Tenant to Landlord, without deduction or offset, in lawful money of the United States of America, at the Willacy County Judges’ office located at 576 West Main, Room 152, Raymondville, Texas 78580, or to such other person or at such other place as Landlord may from time to time designate in writing.

## SECTION IV. NO SECURITY DEPOSIT

Tenant shall not be required to pay any security deposit as part of this Lease.

## SECTION V. DIRECT TAX EXPENSES

Landlord and Tenant acknowledge that as governmental entities or entities wholly owned by governmental entities, their properties are generally not subject to ad valorem taxation. Nevertheless, should this assumption be in error or should the laws change so that the Premises is subject to ad valorem taxation, Landlord and Tenant agree Tenant shall pay all Direct Tax Expenses directly to the applicable taxing bodies.

## SECTION VI. USE OF PREMISES

The Premises are leased to the Tenant for the purpose set forth in Section I, paragraph A, subparagraph (4) and purposes ancillary thereto. The Premises shall be used for no other purposes without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

## SECTION VII. MAINTENANCE, ALTERATIONS AND MECHANICS' LIENS

Tenant shall be solely responsible for all maintenance and repairs required during the Lease Term to keep the Premises in Good Condition. Tenant shall timely and promptly perform all maintenance of the Premises to avoid further deterioration or damage.

During the first (1<sup>st</sup>) year of the Initial Term, Tenant shall have the right to make any and all repairs, replacements, or alterations to the Premises reasonably necessary to bring the Premises into an operable condition as a County jail facility including those necessary to obtain the Governmental Approvals (the “Required Renovations”). The Required Renovations shall be performed by Tenant at Tenant’s sole cost and expense (the “Required Renovation Expense”). Landlord agrees to reimburse Tenant for fifty percent (50%) of the reasonable cost and expense of

the Required Renovations on the following terms and conditions (the “Required Renovation Reimbursement”):

- (i) Tenant shall have provided written documentation (invoices, receipts, etc.) to Landlord demonstrating the total amount of the Required Renovations.
- (ii) The maximum amount of Required Renovation Reimbursement to be paid by Landlord to Tenant shall not exceed One Million Dollars (\$1,000,000.00).
- (iii) The Required Renovation Reimbursement shall be paid by Landlord to Tenant as a credit from the Annual Rental divided evenly between the sixth (6<sup>th</sup>) and tenth (10<sup>th</sup>) years of the Initial Term. For example, if the Required Renovation Expense is \$2,500,000.00, then (A) the Required Renovation Reimbursement will be \$1,000,000.00, and (B) the Required Renovation Reimbursement will be credited \$200,000.00 from the Annual Rentals for years 6 through 10 of the Initial Term.

Except as to the Required Renovations, during the first twenty-five (25) years of the Initial Term, Tenant shall not make, directly or indirectly, any alterations to the Premises without first obtaining Landlord's written consent. Thereafter, Tenant shall have the right to renovate, upgrade, or replace any improvements on the Premises without Landlord's consent; however, Tenant shall not have the right to demolish any existing improvements on the Premises unless (i) Landlord consents in writing, or (ii) such demolition is part of a renovation or reconstruction project designed to enhance the improvements or facilities. Any alteration shall become at once a part of the realty and belong to Landlord.

Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished, or obligations incurred by Tenant.

Tenant agrees that, if Tenant desires to make any alterations of the Premises which require Landlord's approval as provided herein, Tenant will not begin any alteration of the Premises until receipt by it of Landlord's written consent required by this Section VII. Landlord shall not unreasonably withhold consent for such alterations.

#### SECTION VIII. NO WORK TO BE PERFORMED BY LANDLORD

Landlord is not responsible for and shall not be required to perform any work upon the Premises of any type or nature.

#### SECTION IX. RESTRICTIONS ON USE

Tenant shall, at Tenant's sole cost and expense, comply with all requirements, pertaining to the Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering such building and appurtenances.

Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any nuisance (public or private) or other act or thing of any kind whatsoever that may disturb the quiet enjoyment or cause unreasonable annoyance of any other Tenant in the building.

## SECTION X. COMPLIANCE WITH LAW

Tenant shall, at its sole cost and expense, comply with all laws pertaining to Tenant's use of the Premises, and shall faithfully observe all laws in the use of the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party to it or not, that Tenant has violated any law in the use of the Premises shall be conclusive of that fact as between Landlord and Tenant. Without limiting the generality of the foregoing, the duties of Tenant under this provision shall include the making of all such alterations of the Premises as may be required by law by reason of the particular manner or mode of use of the Premises by Tenant or occasioned by reason of Tenant's failure to maintain or repair the Premises as required under this Lease.

## SECTION XI. EXCULPATIONS AND INSURANCE

A. *Exculpation of Landlord.* Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property. Tenant waives all claims against Landlord or Willacy County for damage to person or property from any cause relating to the Premises or the use thereof.

B. *Insurance.* Tenant at its cost shall maintain public liability and property damage insurance with liability limits of not less than \$5,000,000.00 aggregate and \$5,000,000.00 per occurrence, and property limits of not less than \$1,000,000.00 per occurrence insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. The general liability policy must be endorsed to name Landlord and Willacy County as additional insureds, shall contain cross-liability endorsements, must not be endorsed to exclude the sole negligence of Landlord or Willacy County from the definition of "insured contract," must contain waivers of subrogation claims against Landlord and Willacy County, and shall be primary insurance as far as Landlord is concerned.

Tenant at its cost shall maintain property insurance for all causes of loss providing one hundred percent (100%) of replacement cost of all improvements on the Premises and all furniture, fixtures, equipment, and other business personal property located in the Premises. Landlord and Willacy County shall be named as additional insureds and loss payees on the policy.

C. *Increase in Amount of Public Liability.* Not more frequently than every five (5) years, Landlord and Tenant shall examine the liability limits of Tenant's public liability insurance, and Tenant shall increase such insurance coverage as reasonably necessary to be consistent with the liability limits that Tenant maintains on its other public facilities.

D. *Waiver of Subrogation.* The parties release each other, and their respective authorized representatives, from any claims for damage to any person or to the Premises and the building and other improvements in which the Premises are located, and to the fixtures, personal property, Tenant's Improvements, and alterations of either Landlord or Tenant in or on the Premises and the building and other improvements in which the Premises are located that are caused by or result from risks insured against under any fire and extended coverage insurance policies carried by the parties and in force at the time of any such damage. Tenant shall cause each insurance policy

obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Landlord in connection with any damage covered by any policy.

E. *Other Insurance Matters.* All the insurance required under this Lease shall:

1. Be issued by insurance companies authorized to do business in Texas, with a financial rating of at least an A + 3A status as rated in the most recent edition of Best's Insurance Reports.
2. Be issued as a primary policy.
3. Contain an endorsement requiring 30 days' written notice from the insurance company to both parties and Landlord's Lender before cancellation or change in the coverage, scope, or amount of any policy.
4. Be renewed not less than 20 days before expiration of the term of the policy.

Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with Landlord at the commencement of the term and on each renewal of the policy.

## SECTION XII. LAWS AND REGULATIONS

Tenant shall faithfully observe and comply with the laws and regulations of the State of Texas relating to the standards for county jails, and with the ordinances and regulations of Willacy County and the City of Raymondville applicable to the Premises.

## SECTION XIII. UTILITIES

Tenant shall pay for all water sewer, electricity and other utilities necessary for the use of the Premises.

## SECTION XIV. PERSONAL PROPERTY TAXES

Landlord and Tenant acknowledge that they contemplate no ad valorem taxes will be assessed on Tenant's Personal Property. Nevertheless, Tenant shall pay all property taxes, if any, lawfully assessed by any governmental body upon Tenant's Personal Property.

## SECTION XV. REPAIR

Tenant, at Tenant's sole cost and expense, shall keep the Premises and every part of it in Good Condition, damage to it by fire, earthquake, act of God or the elements excepted.

Upon the expiration or earlier termination of the Lease Term, Tenant shall surrender the Premises to Landlord in Good Condition, ordinary wear and tear and damage by fire, earthquake, act of God or the elements excepted.

No representations respecting the condition of the Premises have been made by Landlord to Tenant.

## SECTION XVI. RESTORATION OF PREMISES

Tenant agrees that upon the expiration of the Lease Term, or upon the earlier termination of the Lease, or upon Tenant's unlawful abandonment of the Premises, whichever occurs first, Tenant will deliver the Premises to Landlord in Good Condition, reasonable wear and tear, loss by fire or other casualty, and acts of God excepted.

If Tenant made any alteration or improvement of the Premises, with or without Landlord's consent as required by the terms of this Lease.

#### SECTION XVII. ENTRY BY OWNER

Tenant shall permit Landlord and its authorized representatives to enter the Premises at all reasonable times and upon no less than ten (10) days' prior written notice, for purposes of inspection of any portion of the buildings, improvements or land, without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises occasioned by such acts.

#### SECTION XVIII. ESTOPPEL CERTIFICATES

Tenant shall at any time and from time to time, upon not less than thirty (30) days' prior written request by Landlord, execute, acknowledge, and deliver to such party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there has been any modification of this Lease that it is in full force and effect as modified and stating the modification or modifications) and that there are no defaults existing (or if there is any claimed default, stating its nature and extent) and stating the dates to which the Annual Rental has been paid in advance. It is expressly understood and agreed that any such statement delivered pursuant to this Section XVIII may be relied upon by any prospective purchaser of Landlord's estate, or any Lender or prospective assignee of any Lender on the security of the Premises or the property of which it is a part or any part of it, and by any third person.

#### SECTION XIX. ABANDONMENT OF PREMISES

Tenant shall not vacate or abandon the Premises at any time during the Lease Term. Landlord shall have the right to terminate this Lease if Tenant vacates or abandons the Premises, or ceases using the Premises as a county jail facility, for a period of two (2) consecutive years, not including any time during which the Premises are not in use due to the construction of alterations or improvements to the Premises. If Tenant so abandons, vacates, or surrenders the Premises, so ceases use of the Premises as a county jail or is dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned.

#### SECTION XX. REMOVAL OF TRADE FIXTURES OF TENANT AT END OF TERM

If Tenant shall fully and faithfully perform all of Tenant's obligations under this Lease contract, then Tenant may, and upon Landlord's request shall, remove all personal property and trade fixtures placed or installed in the Premises by Tenant at the expiration or termination of the Lease Term, provided that the removal may be effected without damage to the Premises. To the degree that they are still located on the Premises at the termination of the Lease, Tenant shall not remove any personal property or fixtures in place on the Premises on the Effective Date, or any power generator placed on the Premises as a part of the Required Renovations.

## SECTION XXI. SURRENDER OF LEASE

The voluntary or other surrender of this Lease by Tenant, accepted by Landlord, or the mutual cancellation of this Lease, shall not work a merger and shall, at Landlord's option, terminate all or any existing subleases or subtenancies or operate as an assignment to Landlord of any or all of such subleases or subtenancies.

## SECTION XXII. HOLDING OVER

Any holding over after the expiration of the Lease Term without Landlord's consent shall be construed to be a tenancy from month to month at an Annual Rental of \$2,500,000.00, payable in monthly installments of \$208,333.33.

## SECTION XXIII. GRACE PERIOD

A. No default or breach of any of the covenants and conditions shall exist on the part of Landlord or Tenant until the party claiming default or breach shall serve upon the other a written notice, as provided in this Lease, specifying with particularity wherein such default or breach is alleged to exist and the other party shall fail to perform or observe such covenant or condition, as the case may be, within 30 days after the serving of such notice on it in the case of any monetary default, or within 60 days after the serving of such notice in the case of any non-monetary default (or a reasonable period if such cure cannot reasonably be achieved within 60 days)(each a "Grace Period"). Tenant acknowledges and understands that during the first three years of this Lease Landlord will apply most of the Annual Rental to the payment of outstanding bonds secured and collateralized by the Premises. Any delay in the prompt and timely payment of the Annual Rental during the first three years of this Lease could lead to the implementation by the bond holders of collection or foreclosure measures that could and likely would negatively impact Landlord's and Tenant's interests in this Lease and the Premises.

B. In the event, that the default is in the payment by Tenant in the Annual Rental or any other monetary amounts owed from Tenant to Landlord, Tenant shall be required to pay interest to Landlord on such unpaid amounts at the maximum rate allowable by law until such date as the amount has been paid in full.

C. If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive laws, or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be extended for a period equivalent to the period of such delay, provided, however, that nothing in this Section XXIII shall excuse Tenant from the prompt payment of the Annual Rental or other charge required of Tenant except as may be expressly provided elsewhere in this Lease.

## SECTION XXIV. LANDLORD'S REMEDIES UPON DEFAULT

**Landlord and Tenant expressly acknowledge and declare that this Lease is a contract for goods and services. Landlord and Tenant intend this Lease to be fully enforceable in accordance with its terms. Landlord and Tenant expressly waive any defense based on**

**sovereign immunity under Chapter 271 of the Texas Local Government Code.** Landlord shall have the following remedies if Tenant commits a default and fails to cure such default within the applicable Grace Period. These remedies are not exclusive but are in addition to any remedies now or later allowed by law.

- A. Landlord shall have the right either (i) to terminate this Lease, or (ii) to terminate Tenant's right to possession of the Premises and to have this Lease continue in full force and effect.
- B. Should Landlord elect to terminate this Lease, then Landlord shall have the immediate right of entry and may remove all persons and property from the Premises. Such property so removed may be stored in a public warehouse or/elsewhere at the cost and for the account of Tenant.
- C. Should Landlord elect to terminate Tenant's right to possession of the Premises but to continue the Lease in full force and effect, then, Landlord, in addition to any other rights and remedies under any applicable statute or law, Tenant agrees to surrender possession and vacate the Leased Premises immediately and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Leased Premises, or any part thereof, and to expel or remove Tenant and any other person, firm or corporation who may be occupying or within the Premises or any part thereof and remove any and all property therefrom, using such force as may be necessary, without terminating this Lease or releasing Tenant in whole or in part from Tenant's obligation to pay the Annual Rental and perform any of the covenants, conditions and agreements to be performed by Tenant, as provided in this Lease, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's right to rent or any other right of Landlord in this Lease or by operation of law. Upon and after entry into possession, without terminating this Lease, Landlord shall take reasonable efforts to re-let the Premises for the account of Tenant for such Annual Rental and upon such terms and to such person, firm or corporation and for such use or uses and such period or periods as Landlord, in Landlord's reasonable discretion, shall determine. If the consideration collected by Landlord upon any such reletting for Tenant's account is not sufficient to pay, as liquidated damages, the Annual Rent reserved in this Lease, Tenant agrees to pay to Landlord the deficiency upon demand.
- D. Notwithstanding anything to the contrary contained herein, in no event shall Tenant be liable to Landlord for more than (i) the sum of the remaining Annual Rentals due during the first ten (10) years of the Initial Term, if such default occurs during the first ten (10) years of the Initial Term, or (ii) the two (2) years' Annual Rentals coming due after the date of such default, if such default occurs at any time after the tenth (10<sup>th</sup>) year of the Initial Term.
- E. Notwithstanding anything to the contrary contained herein, Tenant shall at all times be solely responsible for the security, care, safekeeping, housing and well-being of any inmates kept, housed or incarcerated by Tenant on the Premises.

If Tenant shall be in default in the performance of any covenant to be performed by it under this Lease, then, after notice and without waiving or releasing Tenant from the performance of such covenant, Landlord may, but shall not be obligated to, perform any such covenant, and in exercising any such right pay necessary and incidental costs and expenses in connection with it. All amounts so paid by Landlord, together with interest on it at the maximum rate of interest per year allowed by law, shall be payable to Landlord upon thirty (30) days' written notice.

Annual Rental not paid when due shall bear interest at the maximum rate of interest per year allowed by law from the date due until paid.

#### SECTION XXV. ATTORNEY'S FEES ON DEFAULT

If either Landlord or Tenant shall obtain legal counsel or bring an action against the other by reason of the breach of any covenant, warranty or condition of this Lease or otherwise arising out of this Lease, the unsuccessful party shall pay to the prevailing party reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

The term "prevailing party" shall include, without limitations, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement or judgment.

#### SECTION XXVI. INSOLVENCY

The occurrence of any of the following events shall constitute a breach of this Lease by Tenant and a default under this Lease:

- (1) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant; or
- (2) A general assignment by Tenant for the benefit of creditors; or
- (3) Any action taken or suffered by Tenant under any insolvency or bankruptcy act.

#### SECTION XXVII. ASSIGNMENT OR SUBLETTING

A. Tenant shall not assign this Lease or any interest in it to any other party except an entity wholly owned and controlled by Tenant (including any Public Facility Corporation formed by Tenant). Tenant may sublet the Premises or any part of it or any right or privilege appurtenant to this Lease or permit any other person (the agents and servants of Tenant excepted) to occupy or use the Premises or any portion of it without first receiving Landlord's written consent; however, Tenant shall remain fully obligated to fulfill and comply with all its duties and responsibilities under this Lease.

B. Except as otherwise expressly provided in this Lease, in the event that Tenant sublets any portion of the Premises pursuant to Section A. above, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants, and conditions of this Lease unless Landlord agrees in writing to release Tenant from such obligations.

C. Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease. Landlord, as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease, except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to collect such rent.

#### SECTION XXVIII. TRANSFER BY LANDLORD; RELEASE FROM LIABILITY

If Landlord shall sell or transfer the Premises or any part of it and as a part of such transaction shall assign its interest as Landlord in and to this Lease, then from the effective date of such sale, assignment, or transfer Landlord shall have no further liability under this Lease to Tenant except as to any matters of liability that have accrued and are unsatisfied as of such date, it being intended that the covenants and obligations contained in this Lease on the part of Landlord shall be binding upon Landlord and its successors and assigns only during their respective periods of ownership of the fee or leasehold estate, as the case may, be.

#### SECTION XXIX. DAMAGE TO OR DESTRUCTION OF PREMISES

In the event of a total or partial destruction of the Premises, Tenant shall repair such destruction within a commercially reasonable period. Such destruction shall in no way annul or void this Lease, and Tenant shall not be entitled to a proportionate reduction of Annual Rental while such repairs are being made.

#### SECTION XXX. EMINENT DOMAIN

If all or any part of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, Landlord and Tenant shall each be entitled to seek compensation for its interest in the Premises, considering the remaining Lease Term, and any investment made in the Premises by Tenant.

#### SECTION XXXI. EFFECT OF EXERCISE OF OR FAILURE TO EXERCISE RIGHTS BY LANDLORD

Neither the exercise of nor failure to exercise any right, option, or privilege under this Lease by Landlord shall exclude Landlord from exercising any and all other rights, options, or privileges under this Lease, nor shall such exercise or nonexercise relieve Tenant from Tenant's obligation to perform each and every covenant and condition to be performed by Tenant under this Lease, or from damages or other remedy for failure to perform or meet the obligations of this Lease.

#### SECTION XXXII. WAIVER

The waiver by Landlord of any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of such term, covenant, or condition, or of any other term, covenant, or condition in this Lease.

The acceptance of the Annual Rental under this Lease by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease other than Tenant's breach in failing to pay the particular installment of Annual Rental so accepted regardless of Landlord's knowledge of such additional preceding breach at the time of the acceptance of such Annual Rental.

#### SECTION XXXIII. NOTICES

All notices to be given to Tenant may be given in writing personally or by depositing such notices in the United States mail, postage prepaid, and addressed: if to Tenant, at Tenant's notice address as set forth in Section I, paragraph A, subparagraph 5 or at such other place or places as Tenant may from time to time designate in writing; if to Landlord, to the County Judge at 576 West Main, Room 152, Raymondville, Texas 78580, or at such other place or places as Landlord may from time to time designate in writing.

#### SECTION XXXIV. REPRESENTATIONS

Landlord represents and warrants to Tenant that, to the best of Landlord's actual knowledge, there is not in violation of any federal, state or local laws or regulations including but not limited to any environmental laws and regulations respecting contamination of property by "hazardous wastes" or "hazardous substances" (as those terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) together with the regulations promulgated pursuant thereto, "CERCLA").

Tenant acknowledges that, except as to the representations included in this Article, neither Landlord nor any agent, servant, or representative of Landlord, or any person purporting to act on Landlord's behalf, has made any representation, warranty, or statement with respect to the amount of taxes that may or will be assessed against the Premises or about the cost of any insurance required to be secured by Tenant under this Lease or any other matter relating to this Lease that is not expressly covered in this Lease. With respect to such matters, Tenant is relying upon Tenant's own independent investigation and sources of information, and Tenant expressly waives any right Tenant might otherwise have under the law to rescind this Lease or to claim damages by reason of the fact that such taxes or assessments or costs of insurance may be in excess of any amount deemed reasonable by Tenant, or in excess of any amount Tenant anticipated paying under this Lease.

#### SECTION XXXV. NOTICE OF SURRENDER OR TERMINATION

In the event Tenant elects not to continue the Lease Term for one of the Extension Terms, then Tenant shall, at least one hundred eighty (180) days before the expiration of the then current Lease Term, give to Landlord a written notice of intention to surrender the Premises on the expiration date.

#### SECTION XXXVI. EXECUTION

Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for Lease. It is not effective as a Lease or otherwise until execution and delivery by both Landlord and Tenant.

#### SECTION XXXVII. TIME IS OF THE ESSENCE

Time is of the essence of this Lease and each and all of its provisions.

#### SECTION XXXVIII. ENTIRE AGREEMENT; AMENDMENT

This Lease contains all the agreements of the parties with respect to the subject matter and cannot be amended or modified except by a written agreement.

#### SECTION XXXIX. NEGATION OF PARTNERSHIP

Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

#### SECTION XL. PROVISIONS ARE COVENANTS AND CONDITIONS

All provisions, whether stated as covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions.

#### SECTION XLI. USE OF DEFINITIONS

The definitions contained at the beginning of and in the text of this Lease shall be used to interpret this Lease.

#### SECTION XLII. SEVEBABILITY

The invalidity, illegality, or unenforceability of any provision of this Lease shall not render the other provisions invalid, illegal, or unenforceable.

#### SECTION XLIII. CAPTIONS

The headings of the sections of this Lease are descriptive and for convenience only, are not a part of this Lease, and shall have no effect on the construction or interpretation of this Lease.

#### SECTION XLIV. SUCCESSORS

The provisions of this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, administrators, and executors, of the parties.

#### SECTION XLV. APPLICABLE LAW

This Lease shall be construed and interpreted in accordance with the laws of Texas. Landlord and Tenant agree and acknowledge that this Lease constitutes a "major transaction" under Section 15.020 of the Texas Civil Practices & Remedies Code, and Landlord and Tenant agree that venue for any action arising hereunder shall lie exclusively in the State or Federal Courts of Cameron County, Texas.

#### SECTION XLVI. TERMINATION BY TENANT

Tenant, at its sole and absolute discretion, shall have the right to terminate the Lease at any time after the expiration of ten (10) years of the Initial Term, by providing Landlord written notice of its intention to so terminate the Lease at least eighteen (18) months prior to the date of termination. Tenant shall be required to fulfill and comply with all terms of the Lease up to the date of termination.

#### SECTION XLVII. TENANT'S MORTGAGE

In the event that Tenant desires to borrow funds against its leasehold estate created by this Lease, Tenant may mortgage, collaterally assign, or otherwise encumber any interest that Tenant has in this Lease as security for indebtedness to a mortgagee. If Tenant's lender provides notice to Landlord (given in the manner provided for notices in this Lease) of the execution of a mortgage and names the place to which service of notice may be made on the lender, then Landlord shall transmit to such lender, simultaneously with service on Tenant, a copy of any notice which Landlord may desire or be required to give to Tenant pursuant to this Lease relating to Tenant's default under this Lease.

#### SECTION XLVIII. MEMORANDUM OF LEASE

Landlord and Tenant agree to execute a written Memorandum of Lease in the form reasonably acceptable to each party. Tenant may record the Memorandum of Lease at its sole cost and expense.

In witness of this Lease the parties have executed this Lease at the place and on the date first above written.

(signature pages follow)

TENANT

Hidalgo County, Texas

By: \_\_\_\_\_  
Richard Cortez, County Judge

LANDLORD

Willacy County Public Facility Corporation

By: \_\_\_\_\_  
Aurelio Guerra, President

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr. County Clerk

EXHIBIT "A"

PREMISES LEGAL DESCRIPTION

BEING a 50.00- acre tract of land situated in the City of Raymondville, Willacy County, Texas and being a portion of Lots 7 and 12 of the E. B. RAYMOND SUBDIVISION. an addition to the City of Raymondville according to the plat recorded in Volume 2, Page 68 of the Map Records of Willacy County, Texas (MRWCT) and being more particularly described as follows:

BEGINNING the Northeast corner of said Lot 12, said point being on the West R.O.W. line of an unopened county road and the POINT OF BEGINNING of this tract;

THENCE South along said West right-of-way line of an unopened county road a distance of 874.71 feet to a 1/ 2 - inch rebar set for the Southeast corner of this tract;

THENCE West along a line parallel to the North Line of Lot 12, a distance of 1320.00 feet to a 1/ 2 - inch rebar set on the West line of Lot 12 for the Southwest corner of this tract;

THENCE North along the West line of Lot 12 a distance of 1529.71 feet to a 1/ 2 - inch rebar set for the exterior corner of this tract;

THENCE East along a line parallel to the South Line of Lot 7 a distance of 120.00 feet to a 1/ 2 - inch rebar set for the interior corner of this tract;

THENCE North along a line parallel to the West Line of Lot 7 a distance of 132.13 feet to a 1/ 2 - inch rebar set for the Northwest corner of this tract;

THENCE East along a line parallel to the South Line of Lot 7 a distance of 1200.00 feet to a 1/ 2 - inch rebar found for the Northeast corner of this tract;

THENCE South along said West right-of-way line of an unopened county road and the East line of Lot 7, a distance of 787.13 feet to the POINT OF BEGINNING containing 50.00 acres, more or less, inclusive of any and all easements, restrictions, exceptions, or dedication that might be of record.

EXHIBIT B  
RENTAL PAYMENTS

<u>LEASE YEAR</u>	<u>DUE DATE</u>	<u>ANNUAL AMOUNT</u>
1	November 1, 2022	\$3,000,000
2	November 1, 2023	\$3,000,000
3	November 1, 2024	\$3,000,000
4	November 1, 2025	\$2,300,000
5	November 1, 2026	\$2,300,000
6	November 1, 2027	\$2,300,000
7	November 1, 2028	\$2,300,000
8	November 1, 2029	\$2,300,000
9	November 1, 2030	\$2,300,000
10	November 1, 2031	\$2,300,000
11	November 1, 2032	\$2,200,000
12	November 1, 2033	\$2,200,000
13	November 1, 2034	\$2,200,000
14	November 1, 2035	\$2,200,000
15	November 1, 2036	\$2,200,000
16	November 1, 2037	\$2,125,000
17	November 1, 2038	\$2,125,000
18	November 1, 2039	\$2,125,000
19	November 1, 2040	\$2,125,000
20	November 1, 2041	\$2,125,000
21	November 1, 2042	\$2,125,000
22	November 1, 2043	\$2,125,000
23	November 1, 2044	\$2,125,000
24	November 1, 2045	\$2,125,000
25	November 1, 2046	\$2,125,000
26	November 1, 2047	\$100,000*
27	November 1, 2048	\$100,000*
28	November 1, 2049	\$100,000*
29	November 1, 2050	\$100,000*
30	November 1, 2051	\$100,000*
31	November 1, 2052	\$100,000*
32	November 1, 2053	\$100,000*
33	November 1, 2054	\$100,000*
34	November 1, 2055	\$100,000*
35	November 1, 2056	\$100,000*
36	November 1, 2057	\$100,000*
37	November 1, 2058	\$100,000*
38	November 1, 2059	\$100,000*
39	November 1, 2060	\$100,000*
40	November 1, 2061	\$100,000*
41	November 1, 2062	\$100,000*

42	November 1, 2063	\$100,000*
43	November 1, 2064	\$100,000*
44	November 1, 2065	\$100,000*
45	November 1, 2066	\$100,000*
46	November 1, 2067	\$100,000*
47	November 1, 2068	\$100,000*
48	November 1, 2069	\$100,000*
49	November 1, 2070	\$100,000*
50	November 1, 2071	\$100,000*
51-60 (Extension Term 1)	Years 2072 to 2081	\$100,000*
61-70 (Extension Term 2)	Years 2082 to 2091	\$100,000*
71-80 (Extension Term 3)	Years 2092 to 2101	\$100,000*
81-90 (Extension Term 4)	Years 2102 to 2111	\$100,000*

For year 26 of the Initial Term, the “adjusted annual rental” shall be \$100,000.00, present value on Commencement Date of the Lease, adjusted for increases in the published CPI-U since the Commencement Date, and shall be payable in advance on or before November 1, 2047. Thereafter, the adjusted annual rental shall be adjusted every five (5) years (years 31, 36, 41, etc.) by applying to the prior adjusted annual rental the increases in the published CPI-U (or its equivalent) during the prior five (5) year period and shall be payable in advance on November 1 of each year of the Extension Term.