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HHSC, DSHS,  
DADS,  
TCITS/CC



**STATE LEASE  
303-9-10404-B Lubbock**

**THE STATE OF TEXAS §**

**COUNTY OF TRAVIS §**

**1. PARTIES**

This Agreement is made and entered into on this 16 day of April, 2009, by and between Lessor, **Blue Sky Capital, Lubbock, Ltd.**, and LESSEE, **STATE OF TEXAS**, acting by and through the Texas Facilities Commission (TFC).

**2. PROPERTY LEASED**

50,771

Total Square Feet, occupied by the

Health and Human Services Commission (HHSC),  
Department of Aging and Disability Services (DADS)  
Department of State Health Services (DSHS)  
Department of Agriculture (TDA)

at

6302 Iola Avenue

in

Lubbock 79424

Lubbock

County, Texas

Lessor promises, in return for the consideration described herein to be paid by the Lessee and the covenants set out herein to be kept by Lessee, to hereby lease, unto the Lessee, the Property and Premises described herein.

Lessor also promises to furnish any and all requirements related to such Property and Premises as set out in this lease, and the Request for Proposal (RFP), all of which are incorporated herein by reference and made a part hereof for all purposes.

**3. TERMS OF LEASE**

This lease shall be for a period of **120 months** commencing on the **1<sup>st</sup> day of December, 2009** (the Commencement Date), and ending on the **30<sup>th</sup> day of November, 2019** (the Termination Date), unless sooner terminated as hereinafter provided. **This lease is contingent upon the majority approval by a quorum of the Commission members of the Texas Facilities Commission. If the Commission does not approve the Lease, it may be terminated by the State of Texas without liability upon 30 days notice to the Lessor.**

4. MONTHLY RENTAL

The Lessee agrees to pay Lessor a base Monthly Rent during the term of this lease in accordance with the Rent Schedule as detailed in Exhibit A. The rental payments provided for herein shall be due and payable by Lessee in advance on the first day of the month for which said rentals are due.

This lease contract is made and entered into in accordance with and subject to the provisions of the Texas Constitution and the Texas Government Code, Title 10, Subtitle D, and is made contingent upon the continuation of the availability of money appropriated by the legislature to pay for the lease. In the event the Legislature or the Executive Branch of the State of Texas cease to fund the lease, or the agency ceases to exist as a result of the Legislative sunset review process, then the Texas Facilities Commission, hereinafter referred to as Commission, may assign another state agency to the space, or a part thereof, covered by this lease. Should the Commission be unable to find another State agency or agencies to fill, or partially fill the space, the Commission, upon written notice to the Lessor, either may terminate this lease, or sublet in whole or in part to a private third party.

5. RENEWAL OPTION

By mutual agreement between Lessee and Lessor, this lease may be renewed up to 5 times for a period up to 60 months each, under the same terms and conditions. Lessee shall give Lessor written notice of intention to exercise this option at least 180 days prior to expiration of this lease.

6. CPI ESCALATION CLAUSE

- (a) On each anniversary date of the lease commencement, the total monthly rent of the lease may be adjusted by changes in the Consumer Price Index (CPI) reflecting percentage increases.
- (b) To receive the CPI adjustment, the Lessor must submit a request in writing **by certified mail, return receipt requested**, and received by the Texas Facilities Commission (TFC) no later than thirty (30) days after the anniversary date for that year. In determining whether to grant Lessor's request for a CPI increase, in whole or in part, TFC may review and consider Lessor's performance under this lease and whether any issues with the leased premises remain unresolved, as provided in Section 7(k) below.
- (c) The percent escalation allowable will be based on the percent change in the CPI for Urban Wage Earners and Clerical Workers, Current Series (CPI-W, U.S. City Average, All Items) published by the United States Department of Labor, Bureau of Labor Statistics. The index may be obtained from the U.S. Bureau of Labor Statistics web site at [www.bls.gov](http://www.bls.gov).

The index month three (3) months prior the anniversary month for the current year and the previous year shall be used to determine the percent increase.

- (d) A Base Factor of 50%, 40%, 35% or 25% of the monthly rent will be used in the calculation for the escalation, depending on the apportionment of the Lessor's and Tenant's obligation for payment of utilities and janitorial service, in accordance with the following schedule:

Base Factor Percent	Paying Utilities	Paying Janitorial
50%	Lessor	Lessor
40%	Lessor	Tenant
35%	Tenant	Lessor
25%	Tenant	Tenant

(e) **EXAMPLE (Calculation formula with a 50% Base Factor):**

$$\text{Part 1. } \frac{\text{CPI Current Year}}{\text{CPI Previous Year}} = \frac{\text{Difference}}{\text{Divided by Previous Year}} = \frac{\% \text{ Change}}{\% \text{ Change}}$$

$$(\text{Mar 04}) 182.9 - (\text{Mar 03}) 180.3 = 2.6 / 180.3 = 1.4$$

$$\text{Part 2. } \frac{\text{Current Monthly Rent}}{\$2,500.00} \times \frac{\% \text{ Base Factor}}{50\%} = \$1,250.00 \times \frac{\% \text{ Change}}{1.4} = \frac{\text{Rent Increase}}{\$17.50}$$

$$\text{Part 3. } \frac{\text{Current Monthly Rent}}{\$2,500.00} + \frac{\text{CPI Increase}}{\$17.50} = \frac{\text{New Monthly Rent}}{\$2,517.50}$$

- (f) The first eligible CPI rent adjustment for this lease will be **December 1, 2010**, based upon the percent change in the CPI from **September 2010 and September 2009** using a **Base Factor of 25%**. Each succeeding year, the same procedure as outlined above will be used.

## 7. GENERAL TERMS AND CONDITIONS

- (a) Lessor covenants and agrees to pay all taxes of whatever nature, levied and assessed and to be levied or assessed, on or against the leased Property and improvements during the term of the lease; and to keep the leased Premises, Property and buildings in good repair and condition during the continuance of the term of this lease, said maintenance is to include, but is not limited to, the following services: repair and patch wall, ceiling and floor surfaces; painting as needed; replacement of broken window glass; repair of window shades, blinds and/or drapes, fasteners and sash cord or chains; roof and ceiling leaks; building exterior, interior; plumbing, heating, air conditioning and ventilating equipment and filters; fire protection equipment; miscellaneous valves; woodwork, locks, floor surfaces and coverings; lighting fixtures, and the replacement of all defective or burned-out light bulbs, fluorescent tubes, ballasts and starters. If the occupying agency, or its agents, cause damage to said Property that goes beyond "normal wear and tear", the occupying agency is responsible to pay for those repairs.
- (b) Lessor hereby covenants and agrees that hereafter and during the term of this lease, it will not rent, lease or otherwise furnish space in this or any adjacent buildings under its control to any enterprise which, in the usual exercise of its business, could be expected to create noise or odors injurious or disruptive to the occupying agency's normal governmental activity. Lessor covenants and agrees it will not lease space that would locate or collocate any regulated parties which have an interest in the occupying agency/ies or whose occupation of these Premises would cause the occupying agency to be in violation of State statute.
- (c) Lessor warrants that the demised Premises is not in violation of any city, state or local ordinance or statute or any restriction imposed against the demised Premises and that said Lessor will indemnify said Lessee for any direct or indirect loss sustained by Lessee as a result of the existence of such restriction, ordinance or statute.
- (d) Lessor hereby covenants and agrees that the Lessee may bring on the leased Premises any and all furniture, fixtures and equipment reasonably necessary for the efficient exercise of Lessee's governmental responsibilities and the parties agree that all such Property shall remain the Property of the Lessee.
- (e) Any signs necessary to indicate Lessee's name, location and governmental purpose shall be prepared and installed consistent with signage for other lessees in the Property and in keeping with building decor. Any special requirements of Lessee contrary to the above must be stated in writing and made a part of this lease. Any cost of compliance with this paragraph in excess of the amount that would be required for Lessor's standard signage shall be borne by Lessee.
- (f) On termination of this lease, by lapse of time or otherwise, Lessee may, within a reasonable time thereafter, at its option and expense, remove from said Premises any and all

improvements, equipment, appliances or other Property placed or owned by it thereon. Lessee shall deliver the Premises and Property to Lessor in good order and condition, provided however, the reasonable use and ordinary wear and tear are expected.

- (g) If during the term of this lease, said Premises, or any portion thereof, shall be condemned for any public purpose, Lessee hereto shall have the option of terminating and canceling this lease upon thirty (30) days notice to the Lessor of its election to do so.
- (h) It is mutually agreed between the Lessor and the Lessee that if said building and Premises shall, during the term of this lease, be damaged by flood, fire or any other cause or causes, the same shall be promptly repaired by the Lessor. During the time of such repair, if the space cannot be fully utilized by Lessee, lease payments due hereunder shall be either reduced or withheld in accord with the degree of non-use. But, if said building and Premises be so damaged as to render said Premises unfit for occupancy, then, and from the date of such damage, this lease shall cease and be void; and rent and other obligations hereunder shall be due and payable only to the date of such damage. The determination as to whether the building and Premises are damaged so as to render them unfit for occupancy shall be made by Lessee. If the Lessor has available under his control space which will meet Lessee's needs and offers same to Lessee, the Lessee may at its option, occupy that space under the same terms and conditions as this lease. Lessor will be responsible for any relocation costs that may be incurred, included but not limited to, cost of the space, moving, communications equipment and computer expenses.
- (i) Lessee is not obligated to pay rent and other sums under this lease until the premises are available to Lessee for full occupancy and are suitable for use as office space for a state agency. If Lessor is unable to give Lessee full possession of the premises on Commencement Date for any reason, Lessor shall give Lessee immediate written notice of the cause for the delay and the date the premises will be ready for occupancy, Lessee may terminate this lease without liability to the State of Texas and seek other leased space.

Except as provided in Paragraphs 3 and 4, Lessee may not terminate the lease if the delay of occupancy is caused by Lessee, or by conditions beyond Lessor's control, such as strikes, fire, unavoidable casualties or other unusual circumstances that constitutes a justifiable delay.

If the Lessee so elects, the Lessee may continue to treat this lease as if in full force and effect for a period of no more than 120 days after the lease commencement date. During this time, or for as long as possession does not commence, the rent shall not be paid. In the event Lessee either terminates the lease under this paragraph or is unable to occupy the premises on Commencement Date due to reasons other than a justifiable delay as determined by Lessee using reasonable discretion, Lessor will be liable in damages for any rents Lessee pays for other leased space substantially equal to the premises or for any holdover charges associated with a delay in occupying the premises and for any other related losses sustained by Lessee. Payment hereunder shall not begin until possession of the premises is given or the premises are available for full occupancy by the Lessee. Based upon the possession date of the premises, the lease shall be amended to reflect the new lease term.

- (j) Lessee reserves the right to assign any agency of State government to occupy all or any part of the space described herein or to assign or sublet all or any part of the leased Premises to any private entities (persons or corporations).
- (k) In the event Lessor shall breach or be in default in the strict performance of any of the covenants or obligations imposed upon Lessor by this lease, and shall remain in default for a period of thirty (30) days after written notice of such default, Lessee shall have the right and privilege of terminating this lease and declaring the same at an end, and shall have the remedies now or hereafter provided by law for recovery of damages occasioned by such

default. In lieu of a formal declaration of default and resulting termination as provided above, Lessee may withhold payment of rent from Lessor, until such time as the violations have been corrected or the Lessee may correct all or any part of the violations and deduct the cost from rentals due the Lessor.

- (l) If Lessee fails to pay rentals or other charges hereunder or otherwise fails to perform its obligations hereunder and this failure is not cured within 30 days after written notice from Lessor to Lessee of such failure, then Lessee is in default, and Lessor may terminate this Lease and may enter and take possession of premises, and will have the remedies now or hereafter provided by law for recovery of rent, repossession of premises and damages occasioned by Lessee's default. No provision, covenant or agreement contained in this Lease shall be deemed a waiver of sovereign immunity of the State of Texas from tort or other liability.
- (m) The failure of the Lessee or Lessor to insist in any one or more instances on a strict performance of any of the covenants of this lease shall not be construed as a waiver or relinquishment of such covenants in future instances, but the same shall continue and remain in full force and effect.
- (n) This agreement and each and all of its covenants, obligations and conditions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of Lessor, and the successor in office of Lessee.
- (o) This agreement shall be governed by Texas law.
- (p) Lessor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Lessor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Lessor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Lessor and the requirement to cooperate is included in any subcontract it awards.
- (q) Lessor warrants and represents that any use, storage, treatment, or transportation of Hazardous Substances that has occurred in or on the Premises prior to Commencement Date of this Lease has been in compliance with all applicable federal, state, and local laws, regulations, and ordinances. Lessor additionally warrants and represents that no release, leak, discharge, spill, disposal, or emission of Hazardous Substances has occurred in, on, or under the Premises, and that the Premises are free of Hazardous Substances as of Commencement Date.

Lessor shall indemnify Lessee from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, any and all sums paid for settlement of claims and for fees of attorneys, consultants, and experts) arising during or after the lease term from or in connection with the presence or suspected presence of Hazardous Substances in or on the Premises, unless the Hazardous Substances are present solely as a result of negligence, willful misconduct, or other acts of Lessee or Lessee's agents, employees, contractors, or invitees. Without limitation of the foregoing, this indemnification of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision, unless the Hazardous Substances are present solely as a result of negligence, willful misconduct, or other acts of Lessee, Lessee's agents, employees, contractors, or invitees. This indemnification shall specifically include any and all costs due to Hazardous Substances that flow, diffuse, migrate, or percolate into, onto, or under the Premises after the lease term commences.

As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Texas, or the United

States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste," extremely hazardous waste," or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), solvents, pesticides, and petroleum.

- (r) At all times during the lease term, Lessor must maintain a policy of all-risk property insurance, issued by and bonded upon an insurance company licensed in the State of Texas, covering the Leased Premises and leasehold improvements (exclusive of contents), in an amount equal to not less than 80% percent of the replacement cost thereof. Lessee shall have no interest in the policy or policy proceeds and Lessor shall not be obligated to insure any furnishings, equipment, trade fixtures, or other personal property that Lessee may place or cause to be placed upon the Leased Premises. Lessor must also maintain a policy or policies of comprehensive general liability insurance insuring Lessor against loss of life, bodily injury and/or property damage with respect to Common Areas, operation of the Building, parking lots and other improvements associated with the land upon which the Leased Premises are located, and any other losses caused by or related to the duties and obligations of Lessor under this Lease.

Lessor acknowledges that, because Lessee is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of Lessee (other than medical liability of medical staff physicians) or for injuries caused by conditions of tangible state property is provided for solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 1010 and 104), and that Workers' Compensation Insurance coverage for employees of Lessee is provided by Lessee as mandated by the provisions of *Texas Labor code*, Chapter 503. Lessor further acknowledges that, as an agency of the State of Texas, Lessee has only such authority as is granted to Lessee by state law or as may be reasonably implied from such law, and that Lessee shall have the right, at its option, to (a) obtain liability insurance protecting Lessee and its employees and property insurance protecting Lessee's buildings and the contents, to the extent authorized by Section 51.966 of the *Texas Education Code* or other law; or (b) self-insure against any risk that may be incurred by Lessee as a result of its operations under this lease. Any obligation by Lessee under this Lease to obtain insurance is expressly made subject to the Lessee's authority under state law to obtain such insurance. No insurance carrier of either party shall have a right of subrogation against the other party to this lease.

## 8. LEASE REQUIREMENTS

Lessor and Lessee shall comply with all provisions of Exhibit B entitled Lease Requirements which is incorporated herein for all purposes.

## 9. OTHER TERMS AND CONDITIONS

- (a) This lease shall be effective as of the date that all parties execute this lease contract. All proposals, negotiations, notices, and representations with reference to matters covered by this lease are merged in this instrument and no amendment or modification thereof shall be valid unless evidenced in writing and signed by all parties as identified below.
- (b) Any statement or representation of Lessee in any Estoppel Certificate delivered pursuant to this lease which would modify the rights, privileges or duties of Lessor or Lessee hereunder shall be of no force and effect and may not be relied on by any person.
- (c) Should Lessor require Lessee to provide an Estoppel Certificate at any time during the term of this lease, Lessor will give Lessee thirty (30) days prior written notice whereupon TFC will deliver to Lessor a completed signed original of same utilizing its standard Estoppel Certificate form.

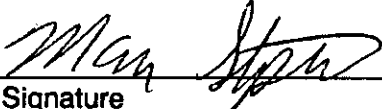
10. SPECIAL PROVISIONS:

(Reserved for special or unusual conditions or requirements of the lease)

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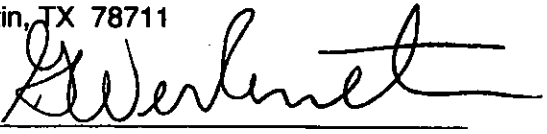
LESSOR:

Blue Sky Capital, Lubbock, Ltd.  
c/o Alliance Realty Services  
Attn: Marc Shipton  
6306 Iola Avenue, Suite 200  
Lubbock, Texas 79424  
Tel. 806-794-1492

By:   
Signature  
marc shipton  
Printed Name

LESSEE:

STATE OF TEXAS,  
Acting by and through the  
TEXAS FACILITIES  
COMMISSION  
PO Box 13047  
Austin, TX 78711

By:   
Gregg Werkenthin  
Deputy Executive Director for  
Space Management and Leasing Services

cc: Ginna Harris, Texas Department of Licensing and Regulation (TDLR)

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| EXHIBIT A  | RENT SCHEDULE                                |
| EXHIBIT B  | LEASE REQUIREMENTS                           |
| EXHIBIT B1 | AGENCY SPECIFIC REQUIREMENTS / ROOM SCHEDULE |
| EXHIBIT C  | GENERAL CONSTRUCTION NOTES                   |
| EXHIBIT C1 | NEW CONSTRUCTION NOTES                       |