

**TEMPLATE AGREEMENT**

**AGREEMENT BETWEEN THE**

**OFFICE OF THE GOVERNOR,**

**[DISTRICT NAME],**

*and*

**[COMPANY NAME]**

*for*

**LIMITATION ON TAXABLE VALUE FOR  
SCHOOL DISTRICT MAINTENANCE AND OPERATIONS  
AD VALOREM TAXES**

**SECTION 1. PARTIES TO THE AGREEMENT.** The parties to this agreement are:

- (1) The Office of the Governor (the “Office”);
- (2) \_\_\_\_\_ (the “District”); and
- (3) \_\_\_\_\_ (the “Company”).

The Office, the District, and the Company may be referred to individually as a “Party” and collectively as the “Parties.”

**SECTION 2. AUTHORITY; PURPOSE.**

**2.1. Authority.** Section 403.612, Texas Government Code, authorizes the Parties to enter this Agreement.

**2.2. Purpose.** The Parties are entering this Agreement to further the goals and purposes the Texas Legislature set forth in the Texas Jobs, Energy, Technology, and Innovation Act, codified in Subchapter T, Chapter 403, Texas Government Code. This Agreement establishes the terms, conditions, and obligations under which the Company qualifies for a limitation on the taxable value for maintenance and operations ad valorem tax purposes of the District of the Eligible Property used as part of an Eligible Project that is the subject of the Application.

**SECTION 3. DEFINITIONS.** The following terms shall have the meanings given to them in this section unless the context in which they are used clearly indicates otherwise. Words or terms defined in Subchapter T, Chapter 403, Texas Government Code or Subchapter O, Chapter 9, Title 34, Texas Administrative Code, and not defined in this Agreement shall have the meanings provided by those provisions.

**3.1. “Additional Job”** means a job, other than a Construction Job, that the Company creates or demonstrates for an Eligible Project that:

**3.1.1.** is a new Full-time Job in this State;

**3.1.2.** is performed primarily at the site of the Eligible Project, allowing for hybrid work schedules but excluding 100% remote work, by an employee hired by the Company (including a Texans Work

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Program trainee under Chapter 308, Texas Labor Code), or by the Company's independent contractor or an employee of the Company's independent contractor;

**3.1.3.** was not transferred by the Company from an existing facility or location in this State unless the Company filled the vacancy caused by the transfer;

**3.1.4.** did not replace an existing job, unless the Company filled the vacancy caused by the replacement;

**3.1.5.** is paid the Required Wage under this Agreement; and

**3.1.6.** is not a Required Job.

**3.2.** "Agreement" means this contract, including any exhibits, attachment, and appendices, as the same may be modified, amended, restated, amended and restated, or supplemented in accordance with Section 14.

**3.3.** "Application" means the form created by the Comptroller pursuant to Section 403.607, Texas Government Code, completed by the Company, and then sent to the Office and the District in accordance with Section 403.609, Texas Government Code. The term includes all forms required by the Comptroller, the schedules attached thereto, and all other documentation submitted by the Company for the purpose of entering an Agreement for Limitation on Taxable Value for School District Maintenance and Operations Ad Valorem Taxes. The term also includes all amendments and supplements thereto submitted by the Company.

**3.4.** "Appraised Value" has the meaning assigned to that term in Section 1.04, Texas Tax Code.

**3.5.** "Appraisal District" means the Appraisal District specified in Exhibit A.

**3.6.** "Average Annual Wage" or "AAW" means the amount equal to the quotient of the total wages the Company paid for Total Jobs, not including wages paid for Construction Jobs, in each of the preceding two years as reported under Section 403.616(c)(4), Texas Government Code; and the number of Total Jobs created in each of the preceding two years, as reported under Section 403.616(c)(3), Texas Government Code.

**3.7.** "Board of Trustees" means the District's Board of Trustees.

**3.8.** "Company" means the entity specified in Section 1 and listed as the applicant on the Application on the date the Comptroller recommends the Application under Section 403.609, Texas Government Code. The term also includes the Company's assigns and successors-in-interest approved under this Agreement.

**3.9.** "Comptroller" means the Texas Comptroller of Public Accounts or the designated representative of the Texas Comptroller of Public Accounts.

**3.10.** "Comptroller's Rules" means the applicable rules and regulations of the Comptroller set forth in Subchapter O, Chapter 9, Title 34, Texas Administrative Code, together with any court or administrative decisions interpreting same.

**3.11.** "Construction Job" means an otherwise full-time job that is temporary in nature and is performed before the start of the Incentive Period to perform construction, maintenance, remodeling, or repair work for the Company in connection with the Eligible Project.

**3.12.** "Construction Period" means the time period between the Effective Date of this Agreement and December 31 of the tax year that includes the Construction Completion Date, as described in Section 5.2.

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- 3.13.** “Day” means calendar day unless otherwise specified.
- 3.14.** “District” means the entity listed in Section 1, being a duly authorized and operating school district in the State, having the power to levy, assess, and collect ad valorem taxes within its boundaries. The term also includes any successor independent school district or other successor governmental authority having the power to levy and collect ad valorem taxes for school purposes on the Company’s Eligible Property.
- 3.15.** “Effective Date” means the date the last signature is affixed to this Agreement.
- 3.16.** “Eligible NAICS Code Classification” means the industry-types and NAICS Codes specified in 34 T.A.C. § 9.5000(3).
- 3.17.** “Eligible Project” means construction of a project or the expansion of an existing facility with an Eligible NAICS Code Classification, but does not include a project to construct or expand a new or existing non-dispatchable electric generation facility or electric energy storage facility.
- 3.18.** “Eligible Property” means the property, described in Exhibit A, that is used as part of an Eligible Project and meets the criteria specified in Section 7.
- 3.19.** “Full-time Job” means a permanent position of employment, other than a Construction Job, requiring a minimum of 1,600 hours of work per year in connection with the Eligible Project.
- 3.20.** “Incentive period” means the period, detailed in Section 5, that pertains to the Eligible Project during which the Eligible Property used as part of the Eligible Project is subject to the limitation on taxable value specified in Section 4.2.
- 3.21.** “Market Value” has the meaning assigned to that term in Section 1.04, Texas Tax Code.
- 3.22.** “Required Job” means a job, other than a Construction Job, that the Company commits to create or demonstrate for an Eligible Project that:
- 3.22.1.** is a new Full-time Job in this State;
  - 3.22.2.** is performed primarily at the site of the Eligible Project, allowing for hybrid work schedules but excluding 100% remote work, by an employee hired by the Company (including a Texans Work Program trainee under Chapter 308, Texas Labor Code), or by the Company’s independent contractor or an employee of the Company’s independent contractor;
  - 3.22.3.** was not transferred by the Company from an existing facility or location in this State unless the Company filled the vacancy caused by the transfer;
  - 3.22.4.** did not replace an existing job, unless the Company filled the vacancy caused by the replacement; and
  - 3.22.5.** pays the Required Wage under this Agreement.
- 3.23.** “Required Wage” means a wage that exceeds 110% of the Sector Wage. The Required Wage is calculated by the Comptroller and is specified in Exhibit A. The term does not include the wages for trainees in the Texans Work Program.

**3.24.** “Sector Wage” means the average annual wage for all jobs in the Company’s applicable industry sector during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission, based upon the specified industry of the Eligible Project, giving priority to 6-digit NAICS level, followed by 5-digit NAICS level, and then 4-digit NAICS level. Applicable wages shall be computed giving priority to average annual wage data from the county in which the Eligible Project is located, followed by average annual wage data in the workforce development area in which the Eligible Project is located, and then statewide average annual wage data.

**3.25.** “State” means the State of Texas.

**3.26.** “Tax Year” has the meaning assigned to that term in Section 1.04, Texas Tax Code.

**3.27.** “Taxable Value” has the meaning assigned that term in Section 1.04, Texas Tax Code.

**3.28.** “Taxing Unit” has the meaning assigned that term in Section 1.04, Texas Tax Code.

**3.29.** “Total Jobs” means the sum of Required Jobs and Additional Jobs in connection with an Eligible Project. The term does not include Construction Jobs.

**SECTION 4. TERM; LIMITATION AMOUNT.**

**4.1. Term of Agreement.** The term of this Agreement begins on the date of the last signature below and ends December 31 of the third tax year following the end of the Incentive Period.

**4.2. Limitation Amount.** Subject to the Company meeting all requirements, duties, and obligations of this Agreement, the taxable value for purposes of the District’s maintenance and operations ad valorem tax in relation to the Eligible Property subject to this Agreement for each tax year of the Construction Period and Incentive Period is as set forth in Exhibit A.

**SECTION 5. INCENTIVE PERIOD.**

**5.1. Duration of Incentive Period.** The Incentive Period for the Eligible Project encompasses the tax years specified in Exhibit A. The Incentive Period shall not exceed ten consecutive tax years.

**5.2. Construction Completion Date.** The term “Construction Completion Date” means the date on which an Eligible Project is first capable of being used for the purposes for which it is constructed, regardless of whether the Eligible Project is being used on that date. The Construction Completion Date is the earlier of:

**5.2.1.** the date on which the Company certifies, in accordance with Section 8.1, that an Eligible Property is first capable of being used for the purposes of the Eligible Project;

**5.2.2.** the Construction Period Ending Date specified in Exhibit A; or

**5.2.3.** the day before January 1 of the first tax year following the tenth anniversary of the Effective Date.

**5.3. Beginning of Incentive Period.** The Incentive Period shall not begin:

**5.3.1.** Earlier than January 1 of the first tax year following the Construction Completion Date; or

**5.3.2.** Later than January 1 of the first tax year following the tenth anniversary of the Effective Date.

**5.4. Modifications of Incentive Period.** Subject to Section 5.3, the Company may request a modification to the Incentive Period only as specified in this Subsection.

**5.4.1. Deferral of Beginning Date of Incentive Period.** Pursuant to Section 403.613(c), Texas Government Code, if the Company projects that the Company will not satisfy the minimum investment requirements specified in Exhibit A by the end of the first tax year of the Incentive Period, the Company may defer the beginning of the Incentive Period to January 1 of the second tax year following the Construction Completion Date.

**5.4.1.1. No Effect on Incentive Period End Date.** Deferring the beginning of the Incentive Period under Section 5.4.1 shall have no effect on the date upon which the Incentive Period ends.

**5.4.1.2. No Tax Limitation During Deferral.** The Company acknowledges that it will not be in the Construction Period or the Incentive Period if it elects to activate a deferral under Section 5.4.1, so the Company will not be granted the limitation specified in Section 4.2 for the tax year during which the deferral applies. Instead, for purposes of this Agreement, the taxable value of the Eligible Property for District maintenance and operations ad valorem tax purposes shall be 100% of the Market Value of the property for that tax year.

**5.4.1.3. Notice Required.** If the Company activates a deferral under Section 5.4.1, the Company shall notify the Comptroller on or before the tenth business day after the Company determines it will activate its deferral. The Company must include in the notice a detailed explanation of its reason for the deferral. Failure to notify the Comptroller of the deferral violates Section 403.613(c), Texas Government Code, and the Company's attempted deferral shall not be given effect.

**5.4.1.3.1.** The Company shall send a courtesy copy of the notice sent under Section 5.4.1.3 to the Office, the District, and the Appraisal District or districts in which the Eligible Project is located.

**5.4.2. Modification of Beginning and Ending Dates of Incentive Period.** Pursuant to Section 403.613(d), Texas Government Code, after the Effective Date, and subject to Section 5.3, the Company may request modifying the beginning and ending dates of the Incentive Period specified in Exhibit A by submitting to the Office, the District, and the Comptroller notice of the requested modification not later than the 90th day before the earlier of the following dates: (1) the first day of the Incentive Period specified in Exhibit A; and (2) the first day of the Incentive Period as proposed to be modified. The Company must include in the notice sent under this provision a revised economic benefit statement that reflects the proposed change to the Incentive Period and that follows the requirements of Section 403.608, Texas Government Code.

**5.4.2.1. Comptroller Determination Required.** The Comptroller will make a new finding under Section 403.609(b)(2), Texas Government Code, regarding the project as proposed to be modified or determine that the finding cannot be made. Under Section 403.613(d), Texas Government Code, the Comptroller is required to notify the Office, the District, and the Company of its determination on or before the 60th day after the Comptroller receives notice from the Company under Section 5.4.2.

**5.4.2.2. Response to Request for Modification.** After receiving the Comptroller's finding described in Section 5.4.2.1, the Office or the District shall each notify all other Parties and the Comptroller whether the respective Party objects or does not object to the modification. The Office or District shall send the notice required by this provision on or

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before the tenth business day after its respective receipt of finding from the Comptroller.

**5.4.2.3. Denial.** The request to modify under Section 5.4.2 is automatically denied if the Comptroller does not make the finding required under Section 403.609(b)(2), Texas Government Code, or if either the Office or the District objects under Section 5.4.2.2.

**5.4.2.4. Approval.** The request to modify under Section 5.4.2 is approved if the Comptroller makes the finding required under Section 403.609(b)(2), Texas Government Code, and neither the Office nor the District objects under Section 5.4.2.2.

If approved, the Office shall send a Notice of Approval to all other Parties and the Comptroller as soon as practicable on or after the fifteenth business day after the Office receives the Comptroller's notice under Section 5.4.2.1. The notice shall include the beginning and ending dates of the modified Incentive Period.

In its notice to the Comptroller, the Office shall request that the Comptroller post the notice in the same manner in which it posts other information under Section 403.622(a), Texas Government Code.

Notwithstanding Section 14, the Parties agree that the Incentive Period specified in the Office's Notice of Approval under this provision modifies and supersedes the Incentive Period specified in Exhibit A and that the Office's notification under this provision serves as the amendment to the Incentive Period and no additional amendment to this Agreement is required.

### SECTION 6. COMPANY OBLIGATIONS.

**6.1. Bond and Health Benefit Plan Requirements.** Without affecting, altering, or limiting requirements, duties, or obligations imposed upon the Company elsewhere in this Agreement, to receive the limitation specified in Section 4.2, the Company must:

- 6.1.1.** By the Effective Date, execute and deliver to the Office a Performance Bond that complies with the specifications set forth in Section 6.5;
- 6.1.2.** Maintain a Performance Bond that complies with the specifications set forth in Section 6.5 for the term of this Agreement, unless otherwise specified in this Agreement; and
- 6.1.3.** Offer and contribute to a group health benefit plan for each full-time employee of the Company for the Term of this Agreement specified in Section 4.1.

**6.2. Jobs Requirement.** The Company shall create at least the number of Required Jobs specified in Exhibit A by the end of the first tax year of the Incentive Period and demonstrate an average of at least that number of jobs during each following tax year until the end of the Term of this Agreement specified in Section 4.1. The average number of Required Jobs shall be calculated by adding all existing Required Jobs as of December 31 of each prior tax year during the Incentive Period, then dividing by the number of years of the Incentive Period that have elapsed.

**6.2.1. Multiple Agreements.** If the Company has two or more active Agreements for Limitation on Taxable Value for School District Maintenance and Operations Ad Valorem Taxes with the Office, a Required Job may not be qualified under two agreements at once.

**6.2.2. Penalty for Failure to Meet Job Requirement.** In accordance with Section 403.614, Texas

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Government Code, the Company is liable to the State for a penalty in the amount computed in this provision if the Company fails to maintain at least the number Required Jobs specified in Exhibit A during the periods covered by two consecutive reports submitted by the Company under Section 8.2. The penalty determined under this provision shall be calculated using data from the most recent report submitted by the Company under Section 8.2 and shall be the lesser of (1) the amount of ad valorem tax benefit received by the Company; and (2) the amount calculated using the following formula:

$$((\text{Required Jobs in Exhibit A} - \text{Required Jobs actually created}) \times (1.1 \times \text{Sector Wage})) \times 2$$

**6.3. Investment Requirement.** The Company shall make an investment in the Eligible Project of at least the amount specified in Exhibit A by the end of the first tax year of the Incentive Period.

**6.3.1. Demonstration Meeting Investment Requirement.** The Company may demonstrate it meets the applicable minimum investment requirement by any reasonable means, including if the Company demonstrates the most recent appraisal roll for the county in which the Eligible Project is located indicates that the appraised value of the Eligible Property composing the Eligible Project as of January 1 of the second tax year of the Incentive Period is equal to or greater than the investment requirement.

**6.4. Wage Requirements.** The Company must pay all persons the Company employs in connection with the Eligible Project at least the Required Wage specified in Exhibit A. The Required Wage shall apply to all Required Jobs and Additional Jobs.

**6.4.1. Penalty for Failure to Meet Required Wage.** In accordance with Section 403.614, Texas Government Code, the Company is liable to the State for a penalty in the amount computed in this provision if the Company fails to meet the Required Wage prescribed in Exhibit A during the periods covered by two consecutive reports submitted by the Company under Section 8.2. The penalty determined under this provision shall be calculated using data from the most recent report submitted by the Company under Section 8.2 and shall be the lesser of (1) the amount of ad valorem tax benefit received by the Company; and (2) the amount calculated using the following formula:

$$(((1.1 \times \text{Sector Wage}) \times \text{Required Jobs in Exhibit A}) - (\text{AAW} \times \text{Required Jobs in Exhibit A})) \times 2$$

**6.5. Performance Bonds.** To ensure the Company's adherence to its obligations and duties under this Agreement and to protect the interests of the State and the District, unless otherwise authorized under this Agreement, the Company shall ensure a Performance Bond in the amount equal to the Bond Amount specified in Exhibit A is in effect for the duration of this Agreement as specified in this Section (the "Performance Bond").

**6.5.1. Performance Bond.** On or before the Effective Date of this Agreement, the Company shall deliver to the Office and the District proof the Company has obtained a Performance Bond in the dollar amount specified in Exhibit A and payable to the Office. This initial Performance Bond shall be effective, and claims may be made upon it, in whole or in part, for at least twelve months after the Effective Date. Thereafter, the Company shall ensure a Performance Bond payable to the Office in the amount specified in Exhibit A is effective and claims may be made upon it, in whole or in part, for the entire term of this Agreement.

**6.5.2. Types of Acceptable Performance Bonds.** The Company shall satisfy its requirement to obtain a Performance Bond using one of the following methods:

**6.5.2.1. Third-Party Performance Bond.** The Company may comply with the

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requirements of Section 6.5 by obtaining a bond from a third-party surety company authorized to do business in this State, with the Company as the principal and the Office as the obligee. The Third-Party Performance Bond must guarantee the Company's performance under this Agreement and must include the requirements established in Section 6.5.3.

**6.5.2.2. Guarantee Agreement.** In lieu of executing a Third-Party Performance Bond, the Company may comply with the requirements of Section 6.5 by executing a Guarantee Agreement, in the form and manner prescribed by the Office, that guarantees the Company's performance under this Agreement. The Company's parent company must execute the Guarantee Agreement in which it agrees to pay the amount specified in Exhibit A if the Office makes a claim on the Guarantee Agreement. The Guarantee Agreement must include the requirements established in Section 6.5.3.

**6.5.3. Claims.** The Company shall ensure the Performance Bond is structured to authorize the Office to make a claim on the Performance Bond, in whole or in part and in more than one occasion, as often as necessary, in the following circumstances:

**6.5.3.1.** Upon termination of this Agreement under Section 9.1 or Section 9.11;

**6.5.3.2.** The Company commits an act that results in the loss of money or property by the Office or the District and that the Office considers to be an act of default described in Section 9.2 or one act in a series of repeated acts of possible default as described in Section 9.7;

**6.5.3.3.** The Company is subject to a penalty under Section 6.2.3 or 6.4.1; or

**6.5.3.4.** Any other instance in which the Company has unpaid *bona fide* amounts due and payable to the Office or the District under this Agreement.

**6.5.4. Limitation on Claim Amount.** For each claim on the Performance Bond, the Office's claim shall never exceed (1) the amount of the Performance Bond; or (2) the ad valorem tax benefit received by the Company under this Agreement as of the date the Office makes the claim, whichever is less. This limitation only applies to claims on a Performance Bond and does not affect any other right, remedy, penalty, or damages allowed in equity, by law, or under this Agreement.

**6.5.5. Impossibility.** If, after the Effective Date, the Company attempts to obtain a Performance Bond, but a Performance Bond is impossible to acquire, the Company may request a temporary waiver from the Office of the Company's duty to maintain a Performance Bond. The Company must submit its request on or before the fifteenth day after it discovers the potential or actual impossibility.

If the Office determines the Company has demonstrated such an impossibility exists, the Office may, in its sole discretion, deliver a signed writing waiving the Company's requirement to obtain a Performance Bond. The waiver is temporary and shall not exceed twelve months.

In this provision, "impossible" means actual impossibility or extreme and unreasonable difficulty or expense caused by circumstances outside of the reasonable control of the Company, including force majeure, as defined in Section 12.5, or if no qualified entities offer bonds that meet the requirements of this Agreement.

**6.5.6. Annual Performance Bond Confirmation.** On or before January 31 of each year until this Agreement expires or is terminated, the Company shall deliver to the Office documentation sufficient to demonstrate the Company meets its obligations under Section 6.5.



**6.5.7. Calling Performance Bond Not Exclusive Remedy.** Making a claim on a Performance Bond is not an exclusive remedy but will be in addition to any rights, remedies, penalties, or damages provided in equity, by law, or under this Agreement.

**6.6. No Payment to the District.** The Company shall not make any payment to the District related to this Agreement, except as provided by law.

**SECTION 7. ELIGIBLE PROPERTY.** The Agreement applies to the property described in Exhibit A.

**7.1. Criteria for Eligible Property.** The Company certifies the property at issue is either wholly owned by the Company or is leased by the Company through a capitalized lease and consists of:

**7.1.1.** a new building or expansion of an existing building, including a permanent and nonremovable part of a building, that will be:

**7.1.1.1.** constructed after Effective Date of this Agreement; and

**7.1.1.2.** located in an area that is designated as a contiguous reinvestment zone under Chapter 311 or 312, Texas Tax Code, or as an enterprise zone under Chapter 2303, Texas Government Code; or

**7.1.2.** tangible personal property, excluding inventory, that is initially located in a zone described in Section 7.1.1.2 after the Effective Date of this Agreement.

**SECTION 8. REPORTING; COMPLIANCE; AUDIT.**

**8.1. Certification of Construction Status.** The Company shall certify, in accordance with the form in Exhibit C, either that: (1) the Eligible Property is not yet capable of being used for the purposes of the Eligible Project, or (2) the Eligible Property is capable of being used for the purposes of the Eligible Project and the date on which the Company made that determination. The Company shall provide a copy of the written certification described in this Section to the District and the Office no later than December 31 of each year following the Effective Date for the duration of the Construction Period.

**8.2. Biennial Report to the Comptroller.** As required by Section 403.616, Texas Government Code, and 34 T.A.C. § 9.5009, the Company shall submit a report to the Comptroller in the form prescribed by the Comptroller not later than June 1 of each even-numbered year during the term of this Agreement. The report shall include all information required by Section 403.616, Texas Government Code, and 34 T.A.C. § 9.5009. The Company shall transmit a copy of each report submitted under this provision to the Office and the District when it submits the report to the Comptroller.

**8.3. Schedule of Required Jobs.** Upon request from the Comptroller, the Company shall provide to the Comptroller a schedule of Required Jobs created in relation to this Agreement as of the date of the request.

**8.4. Enhanced Reporting.** If a biennial report the Company submits under Section 8.2 indicates the Company has failed to meet its obligations under Section 6, or if the Office, in its sole discretion, determines good cause exists, the Office may direct the Company to submit a report to the Office in the form and manner specified by the Office detailing the Company's activities in relation to this Agreement.

**8.5. Third Party Independent Auditor Certification.** The Office may, at its discretion, require the Company, at its own expense, to submit a third-party independent auditor certification of the Company's

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report submitted under Section 8.2 or 8.4. The third-party independent auditor must certify that the Company's data, as reported in the report is a true and correct report as compared to the Company's human resources personnel records and any other Company business or financial records. The third-party independent auditor must be licensed by the Texas Board of Public Accountancy and approved in advance and in writing by the Office.

**8.6. Additional Information; Written Explanation of Variance.** If the Office determines additional information is needed to confirm the Company's compliance with this Agreement, the Office may request additional information from the Company. The Company must promptly provide the additional information. If requested by the Office, the Company shall promptly answer any questions from the Office, whether in writing or otherwise, in connection with a report submitted under Section 8.2 or 8.4.

**8.7. Periodic Progress Briefings.** Upon request by the Office, the Company shall provide periodic briefings to the Office, the District, or both on the general activities, economic impact, and progress of the Eligible Project.

**8.8. Publication of Documents.** The Parties acknowledge that the Comptroller is required to publish the Application; each map and economic benefit statement the Company was required to submit with the Application; each amendment to the Application; this Agreement; and each biennial compliance report in accordance with Section 403.622, Texas Government Code.

**8.9. Cooperation; Additional Information.** The Company shall cooperate fully with the Office in accomplishing the purposes of this Agreement. In addition to the information required under this Agreement, the Office, from time to time, may require additional information related to this Agreement. The Company shall provide requested information to the Office in the form and manner prescribed by the Office.

**8.10. Audit Data.** The Office may request, and the Company shall provide, financial audit documents, or portions thereof, that are directly related to the Company's performance of its obligations under this Agreement.

**8.11. Site Visits and Record Reviews.** The Company shall allow authorized employees of the Office, the District, the Comptroller, the Appraisal District, and the State Auditor's Office to have reasonable access to the Eligible Property and business records from the Effective Date until the Agreement expires or terminates. The access provided to the entities specified in this provision shall only be to the extent necessary for an entity to inspect the Eligible Project to determine compliance with the terms this Agreement or as necessary to properly appraise Eligible Property.

All site visits shall be made at a mutually agreeable time after the giving of not less than ninety-six hours prior written notice and will be conducted in such a manner that does not unreasonably interfere with either the construction or operation of the Company's Eligible Property. One or more of the Company's authorized representatives shall accompany the entities performing the site visit. The site visit shall be conducted in accordance with the Company's safety, security, and operational standards.

**8.12. Records Retention.** The Company shall maintain and retain for a period of five years after this Agreement expires or otherwise terminates or until full and final resolution of all monitoring, audit, or litigation matters, whichever is longer, records necessary to fully justify or substantiate the Company's performance under this Agreement, including but not limited to any daily activity reports and time distribution and attendance records, and other records that show the basis for the calculation of Required Jobs, Required Investment, or Wage Requirements under this Agreement.

**8.13. Security and Confidentiality of Records.** The Company shall establish a method to secure the

confidentiality of records required to be kept confidential by applicable federal or state law, rules, or regulations. This provision shall not be construed as limiting the Office's access to such records and other information or as modifying the Office's duties and responsibilities under state or federal public information laws.

**8.14. Audit Trails.** Appropriate audit trails shall be maintained by the Company to provide accountability for updates and changes to automated personnel and financial systems. Audit trails maintained by the Company will, at a minimum, identify the changes made, the individual making the change, and the date the change was made. An adequate history of transactions shall be maintained by the Company to permit an audit of the system by tracing the activities of individuals through the system. The Company's automated systems must provide the means by which authorized personnel can audit and establish individual accountability for any action that can potentially cause access to, generation of, or modification of information related to the performances of this Agreement.

**8.15. Access to Records and Right to Audit.** The Company shall grant access to all paper and electronic records, reports, data, files, software, books, documents, accounting procedures, practices, or any other items relevant to the performance of this Agreement (collectively "Records") to the Office, auditors of the State of Texas, the Jobs, Energy, Technology, and Innovation Act Oversight Committee, or such other persons or entities designated by the Office for the purposes of inspecting, auditing, evaluating, or copying by the Office, the State of Texas, or such other authorized persons or entities designated by the Office. All Records shall be subject to examination or audit by the Office, auditors of the State of Texas, or such other persons or entities designated by the Office in accordance with all applicable state and federal laws, regulations, or directives. The Company will direct any subcontractor with whom it has established a contractual relationship to discharge the Company's obligations to likewise permit access to, inspection of, and reproduction of all Records of the Company's subcontractors that pertain to this Agreement.

**8.16. State Auditor.** By executing this Agreement and accepting the benefits provided by Subchapter T, Chapter 403, Texas Government Code, the Parties agree that this Agreement and their performance thereunder are subject to review and audit by the State Auditor and subject to the provisions of Section 2262.154, Texas Government Code. The Parties further agree to comply with the following requirements:

**8.16.1. Cooperation.** The Parties shall cooperate with auditors and authorized Comptroller and State of Texas representatives and shall provide them with prompt access to all such property as requested by the Comptroller or the State of Texas.

**8.16.2. Acceptance of State Auditor Authority.** In addition to and without limiting other audit provisions of this Agreement, the acceptance of tax benefits by the Company or person directly in relation to this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Party or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Parties agree that this Agreement shall for its duration be subject to all rules and procedures of the State Auditor acting under the direction of the legislative audit committee.

**8.16.3. Flow Down Provision.** The Company shall include the requirements of this Section in its subcontract with any entity whose employees or subcontractors are subject to the Wage Requirements in Section 6.4, the Comptroller's Rules, or this Agreement, or any entity whose employees or subcontractors are included in the Company's compliance with job, investment, or wage requirements under this Agreement.

**8.17. Location.** The Company shall provide the Office, auditors of the State of Texas, or such other persons or entities designated by the Office, with prompt access to all requested Records. The Company shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all Records subject to audit. If possible, any such audit shall be conducted during the Company's normal business hours at a Company location chosen by the Office and at the Office's expense, provided all costs incurred by the Office in conducting any such audit shall be reimbursed by the Company if the audit reveals a material discrepancy in any Company reporting required by this Agreement or costs incurred by the Office for the Company being unprepared during the audit. The Office, at its discretion, may consider conducting an audit using secure remote access connections with the express knowledge and consent of a Company representative. The remote access shall be made available at reasonable times, upon reasonable notice, and for reasonable periods.

**8.18. Corrective Action Plan.** If any audit reveals any discrepancies or inadequacies that affect the Company's compliance with this Agreement, applicable laws, or regulations, the Company agrees to propose and submit to the Office a corrective action plan to correct identified discrepancies or inadequacies on or before the thirtieth day after the Company's receipt of the audit findings. The Company's corrective action plan is subject to the approval of the Office. The Company further agrees to complete the corrective action(s) proposed by the Company on or before the thirtieth day after the Office approves the Company's corrective action plan, at the sole cost of the Company.

## **SECTION 9. OPPORTUNITY TO CURE; TERMINATION; PENALTIES.**

**9.1. Statutory Termination.** Under Section 403.612(d), Texas Government Code, the Office or the District is authorized to terminate this Agreement if the Company fails to comply with the Jobs Requirement specified in Section 6.2 or the Wage Requirement specified in Section 6.4.

**9.1.1. Prerequisites.** Before terminating under this Section, the Party seeking termination must:

**9.1.1.1.** provide written notice to the Company of the proposed termination; and

**9.1.1.2.** provide the Company a 180-day period to cure and dispute the alleged failure, including through judicial action.

**9.1.2. Determination of Noncompliance.** The Parties agree that the Office, in its sole discretion, shall make the final determination whether the Company failed to comply with the Jobs Requirement specified in Section 6.2 or the Wage Requirement specified in Section 6.4 in the event any Party seeks to terminate this Agreement under this Section.

**9.1.3. Termination Penalty.** If this Agreement is terminated under Section 9.1, the State shall recover from the Company a penalty in an amount equal to all lost ad valorem tax revenue from the Eligible Project and interest on that amount calculated as provided by Section 111.060, Texas Tax Code.

**9.1.3.1. Deposit of Penalty.** The Company shall deliver the penalty prescribed in Section 9.1.2 to the Comptroller for deposit into the Foundation School Fund.

**9.1.4. Agreement Void.** If this Agreement is terminated under this Section, this Agreement is void and all remaining obligations and benefits under this Agreement and Subchapter T, Chapter 403, Texas Government Code, terminate on the date this Agreement is terminated.

**9.2. Acts of Default.** Each of the following acts or omissions of the Company shall constitute an independent act of default under this Agreement:

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- 9.2.1. the Company fails to have the facility or facilities that are the subject of the Eligible Project open and operational by the end date of the Construction Period specified in Exhibit A;
- 9.2.2. the Company fails to meet or maintain its Jobs Requirement under Section 6.2, Required Investment under Section 6.3, or Wage Requirements under Section 6.4 during the Incentive Period;
- 9.2.3. the Company fails to comply with its Performance Bond requirements under Section 6.5;
- 9.2.4. the Company fails to timely provide a report required under Section 8;
- 9.2.5. the Office or the District determine the application that forms the basis for this Agreement, any supplement or amendment to that application, or any application amendment on which this Agreement is recommended is determined to be inaccurate as to any material representation, information, or fact or is not complete as to any material fact or representation or such application;
- 9.2.6. the Company makes any false statements, representations, certifications, affirmations, warranties, or guarantees required by this Agreement, it is subsequently determined that the Company made false statements, representations, certifications, affirmations, warranties, or guarantees in the application to the Comptroller that formed the basis of this Agreement, or it is subsequently determined that the Company has made false statements, representations, certifications, affirmations, warranties, or guarantees included in this Agreement;
- 9.2.7. the Company fails to pay penalties required to be paid under this Agreement; and
- 9.2.8. the Company fails to comply with a term of this Agreement that the Office, in its sole discretion, determines is a material term.

9.3. **Notice of Possible Default.** The Office, in its sole discretion, will determine whether the Company has acted or failed to act in a manner that gives rise to an act of possible default under this Agreement. The Office shall give written notice to the Company setting out the circumstances that support the Office's determination of possible default. The Office shall send courtesy copies of any notices the Office sends under this provision to the District and the Comptroller.

9.4. **Opportunity to Cure.** Subject to Section 9.1.1.2, which requires at least 180 days to cure, the Office will give the Company at least thirty days to cure a possible default and to provide the Office sufficient information that supports a finding of cure by the Office.

9.5. **Cure.** If the Office is satisfied that the Company has cured the possible default, the Office shall give written notice to the Company. The Office will be guided by good faith and reasonableness in determining, in the sole discretion of the Office, whether the Company has cured the possible default.

9.6. **Default.** If the Office is not satisfied in accordance with Section 9.5 that the Company has cured the possible default, then the Company shall be in default hereunder, and the Office shall give written notice to the Company declaring such default. The Office shall send courtesy copies of any notices the Office sends under this provision to the District and the Comptroller.

9.7. **Repeated Acts of Possible Default.** If the Company commits more than two independent acts of possible default—even if each possible default was cured—the Office may determine the Company defaulted on this Agreement. Notwithstanding any other provision of this Agreement, the Office is not required to give the Company any notice of default or an opportunity to cure in this event.

9.8. **Termination for Convenience of State.** The Office may, in its sole discretion, terminate this

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Agreement, without recourse, liability, or penalty against the Office or the District. The Office may not terminate under this provision before the thirtieth day after the Office sends notice of termination under this provision.

**9.9. Termination Due to Funding Limitations.** This Agreement is subject to termination, without penalty to the Office or the District, either in whole or in part, subject to the availability of State funds. If the Office or the District terminates due to a funding limitation, and unless otherwise required by this Agreement or law, the Company may retain any tax benefits received under this Agreement prior to the termination.

**9.10. Agreed Termination.** The Office, the District, and the Company may mutually agree to terminate this Agreement.

**9.11. Termination for Cause.** If the Company fails to perform or comply with an obligation of the terms, conditions, and provisions of this Agreement, or if the Company is in default of this Agreement and has failed to cure the default, the Office may, upon written notice of the default to the Company, the District, and the Comptroller, terminate this Agreement for cause. The Office may not terminate under this provision before the thirtieth day after the Office sends the notice of termination required by this provision.

**9.12. Termination Not Exclusive Remedy; Survival of Terms and Conditions.** Except as provided in Section 9.1.3, which supersedes this provision to the extent any conflict exists between the provisions, termination is not an exclusive remedy, but will be in addition to any penalties authorized under this Agreement or other rights and remedies provided in equity, by law, or under this Agreement. Termination of this Agreement for any reason or expiration of this Agreement shall not release the Parties from any liability or obligation set forth in this Agreement that is expressly stated to survive any such termination. If this Agreement is terminated, the Company must still submit reports required under Section 8 for the last tax year in which this Agreement was effective and comply with its Jobs Requirement under Section 7.2, Required Investment under Section 7.3, and wage information under Section 7.4.

**9.13. Penalties.** The penalties specified in Sections 6.2.3, 6.4.1, and 9.1 are not exclusive and the Parties agree that the Office shall have recourse to any other penalty, either monetary or non-monetary, allowed in equity, by law, and in this Agreement.

**9.14. Payment of Penalty.** If this Agreement is terminated for cause or by agreed termination, the Office may require the Company to immediately pay a penalty in an amount equal to all ad valorem tax revenue from the Eligible Project that the Company did not pay because of this Agreement and interest on that amount calculated as provided by Section 111.060, Tax Code.

**9.15. Dispute Resolution.**

**9.15.1. Informal Meetings.** The Parties' representatives shall meet as needed to implement the terms of this Agreement and will make a good faith attempt to informally resolve any disputes.

**9.15.2. Company's Continued Performance.** The Company shall not be excused from performance during any pending dispute, unless approved in writing by the Office.

**SECTION 10. COMPANY CERTIFICATIONS.** By agreeing to and signing this Agreement, the Company makes the certifications, guarantees, and warranties throughout this Agreement and acknowledges the material nature of such provisions. The Company acknowledges that this Agreement may be terminated, and the Office may assess penalties against the Company if the Company makes false or inaccurate certifications, guarantees, or warranties or does not remain in compliance with the matters for which it has provided certifications, guarantees, or warranties for the duration of this Agreement.

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**10.1. Company Not Ineligible to Contract.** The Company is not listed as ineligible to receive a State contract or investment under Chapter 808, 809, 2270, 2271, 2274, 2275, or 2276, Texas Government Code.

**10.1.1. Entities that Support Foreign Terrorist Organizations.** The Company represents and warrants it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code, and will not engage in such activities during the term of the Agreement.

**10.1.2. Entities that Boycott Israel.** If the Company is required to make a certification pursuant to Section 2271.001, Texas Government Code, the Company certifies it does not boycott Israel and will not boycott Israel during the term of the Agreement.

**10.1.3. Entities that Discriminate Against Firearm Entities and Trade Associations.** If the Company is required to make a verification pursuant to Section 2274.002, Texas Government Code, the Company verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement.

**10.1.4. Critical Infrastructure Affirmation.** Pursuant to Section 2275.0102, Texas Government Code, the Company certifies that neither it nor its parent company, if applicable, nor any affiliate of the Company or its parent company, if applicable, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2275.0103, Texas Government Code, or (2) headquartered in any of those countries.

**10.1.5. Entities that Boycott Energy Companies.** If the Company is required to make a verification pursuant to Section 2276.002, Texas Government Code, the Company verifies its does not boycott energy companies and will not boycott energy companies during the term of the Agreement.

**10.2. Delinquent Child Support Obligations.** The Company certifies that it is not ineligible to receive any grant, loan, or payment under this Agreement pursuant to Section 231.006, Texas Family Code.

**10.3. Buy Texas.** If applicable, with respect to any purchases under this Agreement, the Company certifies that it will buy Texas products, services, and materials when available at a comparable price and within a comparable period.

**10.4. Gift to Public Servant.** The Company warrants that it has not given, offered to give, nor does it intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award and administration of this Agreement.

**10.5. Legal and Regulatory Actions.** The Company represents and warrants that it is not aware and has received no notice of any court or governmental agency actions, proceedings, investigations, or similar actions (collectively "actions"), pending or threatened against the Company within the five years immediately preceding the Effective Date that would or could impair the Company's performance under this Agreement. In addition, the Company represents and warrants that it shall notify the Office in writing on or before the tenth day after any changes to the representations or warranties in this clause or of any actions that the Company may become aware of and receives notice of on or after the Effective Date of this Agreement. The Company agrees that failure to so timely update the Office of actions shall constitute breach of this Agreement and may result in immediate termination of this Agreement.

**10.6. Compliance with Licensing, Permitting and Regulatory Bodies.** The Company certifies that it has or will obtain all licenses, certifications, permits, and authorizations necessary to perform its obligations under this Agreement, without costs to the Office. The Company shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with its obligations under this Agreement. The Company shall comply with all applicable federal and state health and safety standards.

The Company certifies that it currently is in good standing with all licensing, permitting or regulatory bodies that regulate any or all aspects of the Company's business or operations. The Company agrees to comply and remain compliant during the term of this Agreement with all applicable licenses, legal certifications, inspections, and any other applicable local ordinance or state or federal laws.

**10.7. Debt to State.** The Company acknowledges and agrees that, to the extent the Company owes any debt (child support, delinquent taxes, or other obligation) to the State of Texas, to the extent payments to the Company are owed under this Agreement, the payments may be applied to pay those amounts until such debt is paid in full.

**10.8. Prohibited Contracts.** The Company certifies it is not ineligible to receive this Agreement under Section 2155.004, Texas Government Code.

**10.9. Former Executive Head, State Officer, and Employees of the Agency.** The Company certifies that this Agreement is compliant and will remain in compliance during the term of this Agreement, with Section 669.003 (Contracting with Executive Head of State Agency), Section 2252.901 (Contracts with Former or Retired Agency Employees) and Section 572.069 (Employment within two years of Former State Officer or Employee who participated in procurement of goods and services), Texas Government Code.

**10.10. Certification of Good Standing; Delinquent Taxes.** The Company certifies that it is in good standing under the laws of the State in which it was formed or organized and will provide the Office with documentation to support this certification upon request. The Company agrees to remain in good standing with the Texas Secretary of State, the Comptroller, and related state or federal governmental bodies related to the Company's right to conduct its business in this State. The Company certifies that it owes no delinquent taxes to any taxing unit of this State as of the Effective Date and agrees to remain compliant with taxing units of this State during the term of this Agreement.

**10.11. FERPA.** To the extent applicable, the Company shall, at all times and in all respects, comply with the terms of the Family Educational Rights and Privacy Act of 1974, as amended.

**10.12. COPPA.** To the extent the Company obtains data directly from students, each the Company agrees to comply with all applicable obligations of the Children's Online Privacy Protection Act (15 U.S.C. §§ 6501-6506).

**10.13. Certification Relating to Undocumented Workers.** The Company, including any branch, division, and department of the Company, certifies that it does not and will not knowingly employ during the term of this Agreement an undocumented worker, as defined by Section 2264.001(4), Texas Government Code.

**10.14. U.S. Department of Homeland Security's E-Verify System.** The Company certifies that it utilizes and will continue to utilize for the term of this Agreement the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of all persons employed to perform duties within Texas, during the term of this Agreement; and all persons employed or assigned by the Company to perform work pursuant to this Agreement, within the United States of America.



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If this certification is falsely made, this Agreement may be immediately terminated, at the discretion of the Office and at no fault to the Office or the District, with no prior notification.

**10.15. Immigration.** The Company represents and warrants that it shall comply with all applicable U.S. immigration laws with respect to the employment of any individual who will perform labor or services in the U.S. under this Agreement.

**10.16. Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** The Company certifies it is not listed on the federal government's terrorism watch list as described in Executive Order 13224 and will remain compliant with this certification during the term of this Agreement. The Company certifies that it is not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

**10.17. Prior Disaster Relief Contract Violation.** The Company certifies that it is not ineligible to enter this Agreement under Sections 2155.006 and 2261.053, Texas Government Code.

**10.18. Terminated Contracts.** The Company has not had a contract with the State terminated for cause within the past five years and is not currently prohibited from contracting with any state or federal agency. If the Company has a contract terminated for cause with the State or is prohibited from contracting with any state or federal governmental agency, the Company shall identify the contract terminated or the prohibition from contracting and provide an explanation to the Office on or before the fifth day after the event.

**10.19. Deceptive Trade Practices; Unfair Business Practices.** If the Company has been found liable for deceptive trade practices violations under Chapter 17, Texas Business and Commerce Code, or any other unfair business practices in Texas, the Company will notify the Office. If the Company has any officers who have served as officers of other entities who have been found liable for deceptive trade practices violations under Chapter 17, Texas Business and Commerce Code, or any other unfair business practices in Texas, the Company will notify the Office. If the Company or its officers are found liable for deceptive trade practices violations under Chapter 17, Texas Business and Commerce Code, or any other unfair business practices in Texas, the Company shall notify the Office and provide an explanation of the liability determination on or before the fifth day after the event.

**10.20. Contractual Authority.** The Company represents that it has obtained all necessary authority to enter this Agreement.

**10.21. False Statements.** In executing this Agreement, the Company warrants it has not made any false statements, representations, certifications, affirmations, warranties, or guarantees regarding this Agreement. The Company warrants that all statements and information submitted in the Application to the Comptroller and information submitted during the term of this Agreement are or will be true, correct, and accurate.

**10.22. Equal Employment Opportunity; Drug-Free Workplace; Americans with Disabilities Act.** The Company warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities. The Company warrants that it will comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment. The Company represents and warrants it follows the requirements of the Americans With Disabilities Act and its implementing regulations, as each may be amended.

**10.23. Human Trafficking.** The Company certifies that it is not ineligible to enter this Agreement under Section 2155.0061, Texas Government Code.

**10.24. No Vaccine Passport.** The Company certifies it will comply with Section 161.0085, Texas Health and Safety Code, to the extent it is applicable to the Company.

**SECTION 11. NOTICES.** Any notice required or permitted under this Agreement by one Party to the other Parties must be in writing and correspond with the contact information noted in Exhibit A. Any notice required or permitted to be given under this Agreement may be given by regular first-class mail and/or email and shall be deemed to have been delivered on the date of attempted or actual delivery to the recipient if addressed to the receiving Party at the Party's address specified in Exhibit A. The Parties will maintain and monitor at least one active email address for the receipt of Agreement-related communications from the other Parties to the Agreement.

**SECTION 12. GENERAL TERMS AND CONDITIONS.**

**12.1. Compliance with Laws, Rules and Regulations, Directives, Guidelines, and Other Relevant Authorities; Change in Laws and Authorities.** The Company agrees to comply with all applicable state and federal laws, rules and regulations, directives, guidelines, or any other authorities relevant to the performance of the Company under this Agreement as those authorities currently exist and as amended throughout the term of this Agreement. The Office reserves the right, in its sole discretion, to unilaterally amend this Agreement throughout the term of this Agreement to incorporate any modifications necessary for the Office's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

**12.2. Generally Accepted Accounting Principles or Other Recognized Accounting Principles.** The Company shall adhere to Generally Accepted Accounting Principles (GAAP) promulgated by the American Institute of Certified Public Accountants unless other recognized accounting principles are required by the Company or authorized by the Office.

**12.3. Conflicts of Interest; Disclosure of Conflicts.** The Company will operate with complete independence and objectivity without actual, potential, or apparent conflicts of interest with respect to its performance under this Agreement. The Company must disclose, in writing, on or before the fifteenth day after discovery, any existing or potential conflicts of interest relative to its performance under this Agreement.

**12.4. Media Releases or Pronouncements.** The Company shall not use the Office's, the District's, or the Comptroller's name or logo, or refer to those entities directly or indirectly in any media release, public service announcement, or public service disclosure relating to this Agreement, including in any promotional or marketing materials, without first obtaining the written consent from the entity whose name or logo it seeks to use.

This section is not intended to and does not limit the Office's, the District's, or the Company's ability to comply with its obligations and duties under the Chapter 552, Texas Government Code.

**12.5. Force Majeure.** A Party shall not be liable to any other Party for any delay in, nor failure of performance, of any requirement included in this Agreement caused by force majeure. Except for the provisions in Sections 5.2, 5.3, and 5.4 of this Agreement, the existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. "Force majeure" means acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each Party must inform the others in writing, with proof of receipt, on or before the fifteenth day

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after the force majeure arises, or otherwise waive this right as a defense.

**12.6. Fraud, Waste, or Abuse.** The Company acknowledges the Office does not tolerate any type of fraud, waste, or abuse of State resources. The Office's policy is to promote consistent, legal, and ethical organizational behavior. Any violations of law, Office policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event of a formal allegation or a finding of fraud, waste, or misuse of funds, the Company is required to immediately notify the Office of said finding. The Company is also obliged to inform the Office of the status of any ongoing investigation. All notices should be reported to the Office's Fraud Coordinator or Ethics Advisor at (512) 463-2000 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

**12.7. Texas Public Information Act; Confidential Information.** Notwithstanding any provisions of this Agreement to the contrary, the Company acknowledges that the State, the Office, the District, and this Agreement are subject to Chapter 552, Texas Government Code (the "PIA"). The Company acknowledges that the Office and the District will comply with the PIA.

The Parties acknowledge that information created or exchanged in connection with this Agreement is subject to the PIA, and the Parties agree that information not otherwise excepted from disclosure under the PIA will be available in a format that is accessible by the public at no additional charge to the Office or the District, whichever receives the request (the "Receiving Party"). The Company will cooperate with the Receiving Party in the production of documents or information responsive to a request for information.

Information provided by or on behalf of the Company under, pursuant to, or in connection with this Agreement that the Company considers proprietary, financial, or trade secret information (collectively "Confidential Information") shall be designated as such when it is provided to the Office, the District, or any other entity in accordance with this Agreement. The Receiving Party agrees to notify the Company in writing within a reasonable time from receipt of a request for information covering the Company's Confidential Information. The Receiving Party will decide whether to submit a PIA request to the Attorney General.

The Company agrees to maintain the confidentiality of information received from the Office, the District, the Comptroller, or the State during the performance of this Agreement, including information that discloses confidential personal information, particularly, but not limited to, personally identifying information, personal financial information, and social security numbers. If the Company receives a third-party request for information the Company received from the Office or the District, the Company shall notify the Party whose information was requested within twenty-four hours of receipt.

**12.8. Open Meetings Act.** The Company acknowledges the Office and the District are subject to Chapter 551, Texas Government Code (the "Open Meetings Act"). The Company acknowledges the Office and the District will comply with the Open Meetings Act.

**12.9. Survival of Promises.** Notwithstanding the expiration or termination of this Agreement, the rights and obligations pertaining to cooperation and provision of additional information, payment of penalties, confidentiality, disclaimers and limitation of liability, indemnification, audit rights, site visits and record reviews, and records retention will survive after this Agreement expires or is terminated.

**12.10. Severability.** If any term, provision or condition of this Agreement, or any application thereof, is held invalid, illegal, or unenforceable in any respect under any Law (as hereinafter defined), this Agreement shall be reformed to the extent necessary to conform, in each case consistent with the intention of the Parties, to such Law, and to the extent such term, provision, or condition cannot be so reformed, then such term, provision, or condition (or such invalid, illegal or unenforceable application thereof) shall be deemed deleted from (or prohibited under) this Agreement, as the case may be, and the validity, legality, and enforceability

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of the remaining terms, provisions, and conditions contained herein (and any other application such term, provision, or condition) shall not in any way be affected or impaired thereby. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement in an acceptable manner to effect the original intent of the Parties as closely as possible so that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section, the term “Law” shall mean any applicable statute, law (including common law), ordinance, regulation, rule, ruling, order, writ, injunction, decree, or other official act of or by any federal, state, or local government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body having jurisdiction over the matter or matters in question.

**12.11. Non-waiver.** The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time of such failure, shall not be a waiver of that Party’s right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any breach or default in the performance of the same or any other obligation of this Agreement.

**12.12. Binding Effect.** This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their permitted respective representatives, successors, and assigns, transferees, or delegates.

**12.13. Successors and Assigns; Notice to Office.** The Company, or any legal successor thereto or prior assignee thereof, may not assign, transfer, or delegate this Agreement, in whole or in part, or any right or duty required under this Agreement, without obtaining the express written consent and approval of the Office. Any attempted assignment in violation of this Section is void and without effect. The Company shall provide the Office written notice of any assignment, transfer, sale, delegation, change of control or similar transaction as soon as possible and not later than thirty days after the event. The Office, in its sole discretion may refuse to approve any assignment, transfer, delegation or changes to the Company’s duties and responsibilities under this Agreement.

**12.14. Insolvency or Bankruptcy.** If the Company becomes insolvent, or if proceedings in bankruptcy should be instituted by or against the Company, the remaining or unexpired portion of this Agreement may, at the election of the Office, be terminated.

### SECTION 13. SPECIAL TERMS AND CONDITIONS.

**13.1. Independent Contractor Status.** The Company expressly agrees that it is an independent contractor and under no circumstances shall any owner, incorporator, officer, director, employee, or volunteer of the Company be considered a State employee, agent, servant, joint venturer, joint enterpriser or partner of the Office or the State of Texas. The Company is not a “governmental body” by virtue of this Agreement or receipt of grant funds under this Agreement. Likewise, the persons identified by the Company as meeting the Created Job Target or Baseline are not State employees by virtue of this Agreement.

All persons furnished, used, retained, or hired by or on behalf of the Company or any of the Company’s contractors are solely the employees or agents of the Company or the Company’s contractors. The Company or the Company’s contractors shall be responsible for ensuring that all appropriate payments are made, such as unemployment, workers compensation, social security, and other payroll taxes for such persons, including any related assessments or contributions required by law. The Company agrees to take such steps as may be necessary to ensure that each contractor of the Company is deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, joint enterpriser, or partner of the Office or the State of Texas.

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The State of Texas and the Office are not responsible for any types of claims due to actions or performance, taken by the owners, incorporators, officers, directors, employees, volunteers of the Company or any third parties under this Agreement, including but not limited to, the use of automobiles or other transportation, taken by its owners, incorporators, officers, directors, employees, volunteers or any third parties.

**13.2. No Personal Liability.** No employee, officer, representative, or appointee of the Office or the District, including any person executing this Agreement, shall be liable personally under this Agreement or subject to any personal liability for any reason relating to the execution of this Agreement.

**13.3. Taxes/Workers' Compensation; Unemployment Insurance; State Benefits.** The Company agrees and acknowledges the Company is entirely responsible for the liability and payment of the Company's taxes arising out of the performances in this Agreement. The Company agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Office, the District, the Comptroller, the State or any of its employees, agents, officers, representatives, contractors and/or designees shall not be liable to the Company, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a State employee or employee of the Office.

**13.4. Duty to Defend, Indemnify and Hold Harmless.**

**THE COMPANY AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, THE OFFICE, THE DISTRICT AND THEIR EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS OR SUITS WHATSOEVER, INCLUDING ANY RELATED COSTS, ATTORNEYS' FEES, EXPENSES, AND ANY TAX LIABILITY, UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION THAT ARISES FROM ANY ACTS OR OMISSIONS OF THE COMPANY OR ANY OF ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, ASSIGNEES, AND ANY AFFILIATE OF THE COMPANY, RELATING TO THIS AGREEMENT REGARDLESS OF WHETHER THE ACT OR OMISSION IS RELATED TO JOB CREATION OR OTHER PERFORMANCE MEASURE OR STATED PURPOSE OF THIS AGREEMENT.**

**IF THE OFFICE, THE STATE OF TEXAS, OR ITS EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, OR DESIGNEES ARE NAMED DEFENDANTS IN ANY LAWSUIT ASSOCIATED WITH THIS AGREEMENT, THE DEFENSE SHALL BE COORDINATED BY THE COMPANY WITH THE OFFICE AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE COMPANY MAY NOT AGREE TO ANY SETTLEMENT IN SUCH A MATTER WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE COMPANY AND THE OFFICE AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIMS.**

**IF THE DISTRICT OR ITS EMPLOYEES, AGENTS, OFFICERS, REPRESENTATIVES, CONTRACTORS, OR DESIGNEES ARE NAMED DEFENDANTS IN ANY LAWSUIT ASSOCIATED WITH THIS AGREEMENT, THE DEFENSE SHALL BE COORDINATED BY THE COMPANY WITH THE DISTRICT, THE DISTRICT'S LEGAL COUNSEL, AND ANY OTHER PARTY SPECIFIED BY THE DISTRICT. THE COMPANY MAY NOT AGREE TO ANY SETTLEMENT IN SUCH A MATTER WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE DISTRICT. THE COMPANY AND THE DISTRICT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIMS.**

**13.5. No Waiver of Immunity.** The Parties agree that no provision of this Agreement, nor the conduct or

## TEMPLATE AGREEMENT

statement of any person, will be construed as a waiver of the doctrines of sovereign immunity and official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the District, the Office, or the State of Texas, and their officers, employees, or agents as provided by law.

**13.6. Governing Law; Venue.** This Agreement is made and entered into in the State of Texas. This Agreement and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

If the Office is party to a suit, unless the Office consents in writing to a different venue prior to filing a suit, venue for any Company- or District-initiated action, suit, or litigation arising out of or in any way relating to this Agreement shall be commenced exclusively in the Travis County District Court or the United States District Court, Western District of Texas—Austin Division. Venue for any Office-initiated action, suit, or litigation arising out of or in any way relating to this Agreement may be commenced in a Texas state district court or a United States District Court selected by the Office in its sole discretion.

The Company and District hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the courts referenced above for the purpose of prosecuting or defending such litigation. The Company and District hereby waive and agree not to assert as a defense, or otherwise, in any suit, action or proceeding, any claim that the Company or the District is not subject to the jurisdiction of the above-named courts; the suit, action or litigation is brought in an inconvenient forum; or the venue is otherwise improper.

### SECTION 14. ENTIRE AGREEMENT; AMENDMENTS.

**14.1. Entire Agreement.** This Agreement, including all exhibits, reflects the entire agreement between the Parties with respect to the subject matter therein described, and unless otherwise authorized by this Agreement there are no other representations, understandings, or agreements between the Parties related to such subject matter. By executing this Agreement, the Parties agree to comply with the requirements and obligations of this Agreement, including all exhibits.

**14.2. Amendment.** This Agreement shall not be modified or amended except in a writing signed by all Parties. Any properly executed amendment of this Agreement shall be binding upon the Parties and presumed to be supported by adequate consideration. No Party may amend this agreement in a manner that materially modifies the jobs or investment requirements prescribed by this Agreement.

### SECTION 15. EXECUTION OF AGREEMENT.

**15.1. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument, which may be sufficiently evidenced by one counterpart.

**15.2. Electronic Signatures.** The Parties agree this Agreement may be signed in electronic format.

**15.3. Official Capacity; Authority.** The Parties agree that the signatories hereto are signing, executing, and performing this Contract only in their respective official capacities. Each of the Parties represents and warrants that its undersigned representative has the authorization to execute this Agreement for and on behalf of such Party.

**Remainder of this Page Intentionally Left Blank**

TEMPLATE

**TEMPLATE AGREEMENT**

**OFFICE OF THE GOVERNOR**

**[DISTRICT NAME]**

**[COMPANY NAME]**

\_\_\_\_\_  
CHIEF OF STAFF OR  
DESIGNEE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

Date:

Date:

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**EXHIBIT A  
SPECIFIC PROVISIONS**

**1. PROJECT-SPECIFIC PROVISIONS.**

**a. Company Name:**

**b. Company Taxpayer Identification Number:**

**c. Company Address:**

**d. Company NAICS Codes or Industry Types (“Industry Sector”):**

**e. Comptroller Application Identification Number:**

**f. Is the Eligible Project an electric generation facility described by Section 403.602(8)(A)(i)(b), Texas Government Code?**

**g. Description of Eligible Project as detailed in the Application:**

**h. Name and Address of Appraisal District that will appraise the Eligible Property:**

**i. District Name and Address:**

**j. Legal Description of Eligible Property:**

**k. The Eligible Project, including its boundaries, [FALLS | DOES NOT FALL] entirely within a qualified opportunity zone, as defined by Section 403.602(15), Texas Government Code.**

**If applicable, identification of qualified opportunity zone:**

**TEMPLATE AGREEMENT**

**l. Construction Period Beginning Date:**

**m. Construction Period Ending Date:**

**n. Incentive Period Beginning Date:**

**o. Incentive Period Ending Date:**

**p. Tax Liability Limitation:**

The taxable value of the Eligible Property for District maintenance and operations ad valorem tax purposes:

(1) For each tax year beginning with the tax year following the Effective Date and ending December 31 of the tax year that includes the Construction Completion Date for the Eligible Project is:

**ZERO**

(2) For each tax year of the Incentive Period is:

[*Select one:* **50 PERCENT | 25 PERCENT**] of the Market Value of the property for that tax year.

**q. Bond Amount:**

[*Amount specified by the Comptroller*]

**r. Number of Required Jobs:**

(1) [*Select one:* **0 | 10 | 35 | 50 | 75**] jobs by the end of the first tax year of the Incentive Period.

(2) Demonstrate an average of at least [*Select one:* **0 | 10 | 35 | 50 | 75**] jobs during each tax year until the Agreement expires.

**s. Investment Requirements:**

[*Select one:* **\$20 million | \$50 million | \$100 million | \$200 million**] by the end of the first tax year of the Incentive Period

**t. Required Wage:**

The Company's AAW must exceed 110 percent of the Sector Wage for the following sector Company specified in its application:

[COMPANY NAICS]

The Required Wage, as determined by the Comptroller, for the life of this Agreement, is: [*Comptroller-specified amount*], on average, for Total Jobs

**TEMPLATE AGREEMENT**

**2. ADDRESS FOR NOTICES:**

**Office of the Governor**

[NAME]  
[TITLE]  
[DIVISION]  
Office of the Governor  
P.O. Box 12878  
Austin, Texas 78711-2878  
[EMAIL ADDRESS]

**The District**

[NAME]  
[TITLE]  
[DIVISION]  
[DISTRICT NAME]  
[ADDRESS 1]  
[ADDRESS 2]  
[EMAIL ADDRESS]

**The Company**

[NAME]  
[TITLE]  
[DIVISION]  
[COMPANY NAME]  
[ADDRESS 1]  
[ADDRESS 2]  
[EMAIL ADDRESS]

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**EXHIBIT B  
AUTHORIZATION DOCUMENTS**

Attach:

- Comptroller Recommendation Written Notice
- Office of the Governor Written Notice of Determination of Agreeability
- District Written Notice of Determination of Agreeability

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**TEMPLATE AGREEMENT**

**EXHIBIT C  
PROJECT CONSTRUCTION STATUS CERTIFICATION**

I, \_\_\_\_\_, an authorized representative of \_\_\_\_\_ (the "Company"), which has entered into an agreement dated \_\_\_\_\_ with the Office of the Governor and [SCHOOL DISTRICT] in relation to an Eligible Project under the Texas Jobs, Energy, Technology, and Innovation Act (the "Agreement"), hereby certify, to the best of my knowledge, the following (*check one box below*):

- As of December 31 of the year in which this affidavit is signed, the Eligible Property specified in the Agreement will not be capable of being used for the purposes of the Eligible Project.
- As of December 31 of the year in which this affidavit is signed, the Eligible Property specified in the Agreement will be capable of being used for the purposes of the Eligible Project. The Company made this determination on the following date: \_\_\_\_\_.

I understand that for purposes of this certification and the Agreement, if a facility has received a Certificate of Occupancy from an appropriate local authority, the facility is capable of being used for the purposes of the Eligible Project.

I further understand that, if a Certificate of Occupancy is not required in the facility's jurisdiction(s), "capable of being used for the purposes of the Eligible Project" means that a reasonable person familiar with the Company's industry would consider that a facility of the Eligible Property could be used for day-to-day operations and that the facility (1) has passed all mandatory inspections required by the jurisdiction(s) in which the facility is located; (2) provides protection from the elements in the manner structures similar to the facility provide such protection; (3) does not present safety hazards other than those presented in the ordinary course of the Company's industry; (4) has functioning utilities, such as electricity, gas, and water and sewage; and (5) if fixtures or equipment are needed to perform the purposes of the Eligible Project, the fixtures or equipment could be installed or used at the facility, regardless of whether they have actually been installed or used.

I understand that I must, to the best of my ability, provide true and accurate information about the construction completion status of the facilities of the Eligible Project. I understand that failure to comply with my obligation to provide such information could be treated as a violation of the Agreement, or law or regulations, resulting in termination of the Agreement for cause.

I understand that it is a criminal offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity.

Signature \_\_\_\_\_  
(*Authorized Company Representative*)

Date \_\_\_\_\_