

STATE OF TEXAS

COUNTY OF TARRANT

LEASE NO. 694J-59-05

## LEASE AGREEMENT

### 1. PARTIES

This agreement is between **Willoughby Management, LLC.**, hereafter called Lessor and the State of Texas by and through and for the use and benefit of the **Texas Youth Commission (TYC)**, an agency of the State of Texas, hereafter called Lessee.

### 2. PROPERTY LEASED

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 following described property and premises, to-wit:

**8100 West Elizabeth Lane  
Fort Worth, Tarrant County, Texas**

### 3. MONTHLY RENTAL

Rental Amount. The Lessee agrees to pay Lessor no less than **FIVE THOUSAND NINE HUNDRED EIGHTY-SIX DOLLARS AND 25/100 (\$5986.25)** per month, which shall be due and payable by Lessee in advance on the first day of the month for which said rentals are due.

CPI Escalation. Each November 1st of the lease beginning in 2006, the total monthly rent of the resulting contract may be adjusted by changes in the Consumer Price Index reflecting percentage increases or decreases. The Lessor must request by letter any increase in rent no later than thirty (30) days prior to the renewal date. The CPI Escalation Clause (25%), as provided in Attachment "A", is made a part hereof.

### 4. TERM OF THE LEASE

(A) The initial term of this lease shall be ten years, commencing on **November 1, 2005**, and ending on **October 31, 2015**, unless sooner terminated as hereafter provided.

(B) This lease agreement is made and entered into in accordance with the provisions of Title 3, Human Resources Code, and is made contingent

upon the continuation of federally funded programs, or upon the availability of state funds appropriated by the Legislature, to cover the full term and cost of this lease. In the event a curtailment of federally funded programs occurs, or in the event state appropriated funds are unavailable, Lessee upon written notice to the Lessor, may either terminate this lease or amend it in accordance with provisions of the lease.

(C) Renewal of this lease for up to two (2) additional five-year term may be made upon notification by Lessee in writing of its intent to do so no later than 180 days prior to the termination date described in the preceding paragraph.

## **5. LESSOR AGREES:**

(A) 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.

(B) 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 Lessee's normal governmental activity.

(C) that the Lessee may bring onto the leased premises any and all equipment reasonably necessary for the efficient exercise of Lessee's governmental responsibilities.

(D) to certify that the building was free of materials containing friable asbestos or asbestos containing materials (ACM), on June 5, 1981, and that Lessor has not placed asbestos or ACM in the building since that date.

(E) to make major repairs. A major repair is any repair related to the structural or mechanical infrastructure of the facility, i.e., roof repairs, foundation repairs, plumbing or sewer repairs exceeding One Thousand Dollars (\$1,000.00), electrical repairs, mold remediation, air conditioning and heating repairs exceeding One Thousand Dollars (\$1,000.00), and natural gas line repairs. In addition, Lessor agrees to pay for any damage(s) resulting from negligence or delays in making aforementioned repairs, except those described in Paragraphs 6(E) and 6(F), below.

## **6. LESSEE AGREES:**

(A) to pay all utility bills necessary for the proper operation of the duties performed by the Lessee.

(B) to keep the leased premises, property, and buildings in good repair except for major repairs as defined by Paragraph 5(E) above, during the term of the lease.

(C) to provide janitorial services for the space occupied.

(D) to abide by any and all reasonable rules promulgated by Lessor for the proper operation of the subject demised property and appurtenances; provided only that all rules promulgated subsequent to commencement of this lease be submitted to Lessor in writing for consideration and comment at least thirty (30) days prior to implementation.

(E) to repair or replace any part of the leased premises destroyed or damaged by or as a result of students or employees of Lessee or any other employees, agents, representatives, or authorized guests or invitees of Lessee.

(F) to be responsible for repairs related to normal wear and tear of the buildings, including but not limited to, the replacement of carpet, painting, flooring (every forty-two (42) months), and repairs not noted in item 5. E., above.

(G) to not make or allow to be made any alterations or physical additions to the premises without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld, and upon termination of this lease, by lapse of time or otherwise, all such alterations, physical additions or improvements furnished and installed by Lessee that are permanently attached to the premises shall, at Lessee's option, become the property of Lessor and in consideration for the alteration or improvement, Lessor accepts full responsibility for the physical additions or improvements that become the property of Lessor.

(H) to permit Lessor, or its agent(s) or representative(s), the right of entry into and upon any part of the premises at all reasonable hours to inspect same, provided that Lessor notifies Lessee of Lessor's intent to enter the premises at least twenty-four hours prior to entry, except in cases of emergency.

(I) to adhere to all applicable statutes, ordinances, codes, rules, and regulations relating to the public health, safety and welfare.

(J) to meet or exceed the requirements for accessibility for persons with disabilities for those privately owned buildings and facilities leased by state agencies under the provisions of Tex. Rev. Civ. Stat. Ann. art. 9102 (Vernon Supp. 2002). The Texas Department of Licensing and Regulation(TDLR) is required to inspect the lease space before the building or facility is occupied in whole or in part by the state for compliance with all accessibility standards and specifications adopted under this article (Tex. Rev. Civ. Stat. Ann. Art. 9102, §5(q). Lessor will be responsible for payment of all fees required by TDLR for performing its functions under Article 9102, *supra*.

(K) to comply with all applicable provisions of the Americans with Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. Section 12181, et seq.

## **7. GENERAL TERMS AND CONDITIONS**

(A) Lessor further covenants that it has good and sufficient title to the said premises, and has full power and authority to execute this lease and to place Lessee in possession of the premises in full satisfaction of and compliance with the terms and conditions herein. Lessor also agrees that it will not attempt to impose upon Lessee any requirements of other legal instruments related to these premises not referred to herein or made a part hereof. Lessor warrants and defends unto Lessee against the claims of all persons to the leasehold interests of the Lessee. Any person or entity executing this lease as agent for the Lessor shall attach to this lease sufficient evidence or authority to act in the capacity shown.

(B) Lessor warrants that the operation of the Lessee on the demised premises is not in violation of any city 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.

(C) Any signs necessary to indicate Lessee's name, location and governmental purpose shall be prepared and installed in accordance with Lessor's applicable rules and regulations and in keeping with building decor. Any special requirements of Lessee contrary to the above must be agreed to in writing by Lessor.

(D) 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 equipment, appliances or other property placed or owned by it thereon; and shall deliver up said premises and property to Lessor in as good order and condition as they now are, or may be put by the Lessor; provided, however, that reasonable use, ordinary wear and tear, depreciation, damages, or destruction by fire or the elements or unavoidable casualty and repairs, and replacements, for which the Lessor is obligated, are excepted.

(E) If during the term of this lease, said premises, or any portion thereof, shall be condemned for any public purpose, either party hereto shall have the option of terminating and canceling this lease upon thirty (30) days written notice to the other party of its election to so do.

(F) It is mutually agreed between the Lessor and the Lessee that if said building and premises shall, during the term of this lease or extensions thereof,

be slightly damaged by fire or any other cause or causes, the same shall be promptly repaired by the Lessee. 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 accordance with the degree or duration of non-use. However, 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. 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 of this lease.

(G) Lessee reserves the right to assign any agency of state government to occupy all or any part of the space described herein, but covenants and agrees that it will not assign or sublet all or any part of the leased premises to any private parties (persons or corporations), except to maintain the responsibilities presently maintained by Lessee.

(H) In the event Lessee shall be in default in the payment of rentals or other charges hereunder or shall otherwise breach its covenants or obligations hereunder, and shall be and remain in default for a period of thirty (30) days after written notice from Lessor to it of such default, Lessor shall have the right and privilege of terminating this lease and declaring the same at an end, and of entering upon and taking possession of said premises, and shall have the remedies now or hereafter provided by law for recovery of rent, repossession of the premises and damages occasioned by such default.

(I) In the event Lessor shall breach or be in default in 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 from Lessee to it 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, and in special cases urged by the occupying state agency, the Lessee may withhold payments or rent from Lessor, until such time as the violations have been corrected. If violations of this lease create an emergency situation and threaten the occupying agency's ability to use the premises, the Lessee may correct all or any part of the violations and deduct the cost from rentals due the Lessor. Such extraordinary remedies will only be undertaken in the best interest of the State when a move following termination would be highly disruptive to the occupying agency and detrimental to its statutory functions.

(J) 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.

(K) The relationship between Lessor and Lessee is solely one of landlord/tenant. Lessee's operations on the premises are independent of Lessor's operations, and Lessor has no interest, rights, management, responsibility, control or liability concerning Lessee's operations beyond those set forth in this lease.

(L) 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.

(M) All disputes or claims that arise concerning this lease agreement will be made pursuant to Tex. Gov't Code Ann. § 2260 et. seq. (Vernon Supp. 2002).

(N) Lessor shall maintain insurance coverage for the benefit of Lessee to cover Lessee's losses that arise from fire, flood, structural design or defect or other natural or man-made causes, except those described in Paragraph 6(E), above. Lessor shall provide proof of such coverage on the request of Lessee and shall give Lessee reasonable notice of any change if such coverage is modified or terminated.

(O) Lessor understands that it and its subcontractors by accepting funds directly or indirectly under this contract are subject to the authority of the State Auditor or its successor entity to conduct audits or investigations pursuant to Chapter 2262 of the Texas Government Code. Contractor) shall include a clause in its subcontracts providing that its subcontractors are subject to the authority of the State Auditor or its successor entity to conduct audits or investigations. Failure to cooperate with the State Auditor may subject Lessor to criminal penalties.

**LESSOR:**



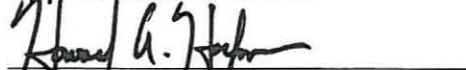
**Raymond D. Smith**  
Manager  
Willoughby Management, LLC.  
Dated: 11/1/05

**LESSEE:**



**Robin McKeever, Ph.D.**  
Assistant Deputy Executive Director - Finance  
Texas Youth Commission  
Dated: 11.15.05

**Approved as to Form:**



**Howard A. Hickman**  
Staff Attorney  
Texas Youth Commission

**ATTACHMENT "A"**  
**ESCALATION CLAUSE (25%)**

***NOTE: This example is for a 25% CPI Escalation provision***

1. On each annual anniversary date of the lease, the total monthly cost of the resulting contract may be adjusted by changes in the Consumer Price Index reflecting percentage increases or decreases. **The Lessor must request by letter to the Lessee any increase in rent no later than thirty (30) days prior to the anniversary date.**
2. The Formula for determining the amount of escalation allowable in any given contract year shall be:

Base Factor X Percent Escalation Allowable = Amount of Escalation Allowed:

The new monthly rental would be the monthly rental in effect for the previous year of the contract increased by the "Amount of Escalation Allowed."

3. Percent Escalation Allowable will be based on a percent change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W, U.S. City Average) published by the United States Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Percent changes shall be rounded to the nearest one tenth of one percent.

For Illustrative Purposes Only:

January, 1985 = 312.6

January, 1986 = 324.3 represents 3.7% increase

4. Base Factor: Twenty-five percent (25%) of the monthly cost on Bid will be the base factor used to calculate the escalation.  
*Example:*  
If the total cost per month for the subject space is \$2,000.00, the base factor would be \$500.00 (25% of \$2,000.00 = \$500.00). Base factor being \$500.00 and the escalation allowable is 3.7%, then the amount of escalation allowed is \$18.50 (\$500.00 x 3.7% = \$18.50) and the new monthly rental for the new year of the contract would be \$2,018.50.
5. The first escalation would be **November 1, 2006**, based upon the percent change in the CPI from *August 2005* and *August 2006*. Each succeeding year, the same procedure as outlined above will be used.