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**LEASE AGREEMENT**

**between**

**THE PUBLIC BUILDING AUTHORITY OF BALDWIN COUNTY**

**and**

**BALDWIN COUNTY, ALABAMA**

**Regarding**

**\$35,965,000**

**Building Revenue Warrants**

**Series 2020 (Jail Project)**

**Dated February \_\_, 2020**

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**LEASE AGREEMENT** (the "Lease" or this "Agreement") between **THE PUBLIC BUILDING AUTHORITY OF BALDWIN COUNTY**, a public corporation organized and existing under the provisions of Chapter 15 of Title 11 of the Code of Alabama of 1975 (the "Authority"), and **BALDWIN COUNTY, ALABAMA**, a political subdivision of the State of Alabama (the "County");

**RECITALS:**

The Authority has been organized and established pursuant to Section 11-15-1, et., seq, Code of Alabama 1975, as amended (the "Act") to provide buildings and facilities for lease to and use by the County in the performance of its respective public functions. The Act under which the Authority has been organized authorizes the County to enter into this Lease, and each of the County and the Authority separately declare, and each individually declares, that it is an essential government function for the County to acquire, construct and operate, or cause to be acquired, constructed or operated, a jail, and related facilities within the County.

The Authority has determined that it is necessary, desirable, and advantageous to issue and deliver its \$35,965,000 principal amount of Building Revenue Warrants, Series 2020 (Jail Project), dated the date of delivery (the "Warrants"), for the purposes of (i) acquiring, constructing, and equipping a new public jail facility, and (ii) paying issuance expenses.

The Warrants will be issued under and secured by a Mortgage, Indenture, and Deed of Trust dated as of February \_\_, 2020 (the "Indenture"), between the Authority and Regions Bank, as trustee (the "Trustee").

The Authority and the County are entering into this Lease Agreement in order to provide for the payment of rent by the County at times and in amounts sufficient to provide for payment of the principal of and interest on the Warrants with respect to each fiscal year of the County during which this Lease Agreement shall be in effect.

The Authority has requested and the County has agreed, as a condition to the Authority's agreement to enter into this Lease, that no federal prisoners be housed at the Project described herein at any time.

NOW THEREFORE, in consideration of the respective agreements on the part of the Authority and the County herein contained, the Authority and the County do hereby agree as follows:

**ARTICLE I**

**DEFINITIONS AND USE OF PHRASES**

**Section 1.1 Definitions.** The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of express provision or clear implication in the Lease to the contrary, be given the following respective meanings in the construction or interpretation of the Lease:

"Act" means Chapter 15 of Title 11 of the Code of Alabama of 1975, as it may from time to time be amended.

"Additional Warrants" means those authorized under the Indenture in Article VIII thereof.

"Authority" means (a) the party of the first part hereto and its successors and assigns, and (b) any public corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party as provided in Section 12.6 of the Indenture.

"Authorized Authority Representative" means any officer of the Authority, or such other representative of the Authority designated in writing to the Trustee by the Authority.

"Basic Rent" means the cash rental payable by the County pursuant to the provisions of Section 5.4 hereof and any other sums payable by the County hereunder that are herein referred to as Basic Rent.

"Warrants", as used in this Lease Agreement, means only the Warrants unless other qualifying words or phrases unequivocally indicate that the term is intended to include obligations of the Authority other than or in addition to the Warrants.

"County" means (i) the party of the second part hereto, and (ii) any political subdivision resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Completion Certificate" means a certificate signed by the Independent Architect and an Authorized Authority Representative stating (a) that the construction of the Improvements has been completed in substantial accordance with the plans and specifications therefor, and (b) the date on which such construction was completed.

"Completion Date" means the date on which the construction of the Improvements is completed, as stated in the Completion Certificate.

"Construction Fund" means the Construction Fund created in Section 9.2 of the Indenture.

"Counsel" means an attorney duly admitted to practice before the highest court of any state of the United States of America or of the District of Columbia, or a firm of attorneys all the members of which are so admitted.

"Warrant Fund" means the Series 2020 Warrant Fund created in Section 10.2 of the Indenture.

"Development Costs" means all costs incurred or assumed by the County or the Authority in connection with the acquisition, design, development, construction, and placing into service of the Project.

"Equipment" means all furniture, furnishings, fixtures, machinery and equipment acquired or to be acquired, the costs of which are or were, in whole or in part, paid, or to be paid, out of the proceeds of the Warrants.

"Facility" means the existing jail and related facilities now located on the Site, including the Improvements and all Equipment and other personal property located thereon.

"Improvements" means the capital improvements made on, to or about the Project from the proceeds of the Warrants.

"Indenture" means the Mortgage Indenture and Deed of Trust between the Authority and

Regions Bank of even date herewith.

"Independent Architect" means an architect or architectural firm qualified to practice the profession of architecture under the laws of Alabama and not employed full time by the Authority or the County.

"Independent Engineer" means an engineer or engineering firm qualified to practice the profession of engineering under the laws of Alabama and not employed full time by the Authority or the County.

"Initial Term" means the period beginning on the date of the delivery of this Lease Agreement and continuing until and including September 30, 2020.

"Interest Payment Date" means March 1 and September 1, beginning September 1, 2020.

"Lease" means this Lease Agreement.

"Net Condemnation Award" means the total amount awarded as compensation for any part of the Project taken under the exercise of the power of eminent domain plus damages to any part not taken, less and except (i) any portion thereof to which the County is entitled under the provisions of Section 7.2 hereof, and (ii) all attorneys' fees and other expenses incurred in the condemnation proceeding with respect to which such award was made (other than those paid directly by the County or deducted, pursuant to the provisions of said Section 7.2, from that portion of the award to which it is entitled under the provisions thereof).

"Net Insurance Proceeds" means the total insurance proceeds recovered by the Authority, the County and the Trustee on account of any damage to or destruction of the Facility or any part thereof less all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such proceeds.

"Payment Date" shall mean the dates on which principal of or interest on the Warrants is due and payable, which for purposes of this Lease shall be March 1 and September 1, beginning September 1, 2020.

"Permitted Encumbrances" means, as of any particular time, (i) liens for ad valorem taxes and special assessments not then delinquent, (ii) the Lease, (iii) the Indenture, (iv) utility, access and other easements and rights-of-way, mineral rights, restrictions and exceptions that, in the opinion of an Independent Architect or Independent Engineer, will not materially interfere with or impair the operations being conducted in the Facility (or, if no operations are being conducted therein, the operations for which the Facility was designed or last modified), (v) any inchoate mechanic's, materialmen's or vendor's lien if payment is not yet due and payable under the contract giving rise to such lien, (vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in size and character to the Project and as do not, in the opinion of Counsel, in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Authority, and (vii) the Site Deed.

"Project" means collectively the Site, the Facility, the Improvements and the Equipment, as they may at any time exist and all other property and rights referred to or intended so to be in the demising clauses hereof.

"Renewal Term" means any period of one year for which the Lease shall be renewed at the option of the County in accordance with the provisions of Section 5.2 of this Lease Agreement.

"Site" means the real property described on Exhibit A hereto.

"Site Deed" means that certain deed from the Baldwin County, Alabama, pursuant to which the Site has been conveyed to the Authority.

"Tax Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Trustee" means Regions Bank, as trustee under the Indenture, and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

"Warrants", as used in this Lease Agreement, means only the Warrants unless other qualifying words or phrases unequivocally indicate that the term is intended to include obligations of the Authority other than or in addition to the Warrants.

**Section 1.2 Use of Phrases.** "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to the Lease as an entirety and not solely to the particular portion of this Lease Agreement in which any such word is used. The definitions set forth in Section 1.1 of this Lease Agreement include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders. Any percentage of Warrants, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then outstanding.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1 Representations by the Authority.** The Authority makes the following representations as part of the basis for the agreements and undertakings on its part herein contained:

(a) The Authority is duly incorporated under the provisions of the Act by Certificate of Incorporation duly filed for record in the office of the Judge of Probate of Baldwin County, Alabama, has not subsequently amended its said Certificate of Incorporation and is not in default under any of the provisions contained in the said Certificate of Incorporation or in the laws of Alabama;

(b) Under the provisions of the Act, the Authority has the power (i) to issue the Warrants for the purposes described in Section 4.2, (ii) to undertake the acquisition and construction of the Facility and to acquire, construct and install the Equipment, (iii) to lease the Facility to the County in accordance with the provisions hereof, (iv) to pledge the rentals and other receipts from the leasing or operation of the Facility (including particularly the Basic Rent hereunder) to the Trustee as provided in the Indenture, (v) to subject the Project to the non-foreclosable lien of the Indenture, (vi) to execute and deliver the Warrants, this Lease Agreement and the Indenture, and (vii) to carry out and consummate all transactions contemplated by each of the aforesaid documents;

(c) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, or the fulfillment or compliance with the terms and conditions hereof, conflict with, or result in a breach of, any of the terms, conditions or provisions of any corporate restriction or limitation or any agreement, instrument or court or other governmental order to which the

Authority is now party or by which it is bound, or constitute a default under any of the foregoing;

(d) All consents, approvals, authorizations and orders of governmental or regulatory authorities, if any, which are required for the execution and delivery of the Warrants, this Lease Agreement and the Indenture and for the consummation of the transactions contemplated by each of the aforesaid documents have been obtained by or on behalf of the Authority and are in full force and effect;

(e) The execution and delivery of this Lease Agreement on the part of the Authority has been duly authorized by all necessary corporate action; and

(f) The Project will constitute a "project" within the meaning of Section 11-15-1(6) of the Code of Alabama of 1975, as amended.

**Section 2.2 Representations by the County.** The County makes the following representations as part of the basis for the agreements and undertakings on its part herein contained:

(a) The County has been furnished a copy of the Indenture and the County approves and consents to the provisions of said instrument;

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflict with, or result in a breach of, any law or constitutional provision applicable to the County or any of the terms, conditions or provisions of any agreement, instrument or governmental order to which the County is now subject or by which it is bound, or constitute a default under any of the foregoing;

(c) The execution and delivery of this Lease Agreement on the part of the County has been duly authorized by its governing body;

(d) The real property specifically described in the demising clauses hereof and Exhibit A hereto is located wholly within the corporate limits of the County;

(e) The Project will constitute a "project" within the meaning of the Act;

(f) The County understands that one of the principal inducements to the purchase of the Warrants by the purchaser thereof from the Authority is that under existing law the interest thereon is excludable from gross income for Federal income tax purposes generally, except to the extent otherwise provided in the Tax Code;

(g) The County agrees that no federal prisoners will be housed at the Facility, and that all federal prisoners housed by the County will be held at a different jail facility of the County, and

(h) The Project, and the use thereof for its intended purpose, will not violate (i) any zoning or other ordinance or any regulation or law of Baldwin County, Alabama, the County or any other municipality, applicable to the Project and its use, or (ii) any restrictive covenant of the County applicable to the Project and its use, and all requirements for such use have been (or will be, prior to the time the Project is placed in service) satisfied.

## ARTICLE III

### DEMISING CLAUSES

**Section 3.1 Demise.** The Authority hereby demises and leases to the County, subject to Permitted Encumbrances, and the County hereby rents from the Authority, subject to Permitted Encumbrances, for and during the Initial Term, the real property described on Exhibit A hereto located within the corporate limits of the County, together with the Facility, the Equipment, the Improvements, all other improvements now or hereafter situated on the Site, not including, any equipment or other personal property that, under the provisions hereof, is or is to become the sole property of the County or third parties.

## ARTICLE IV

### CONSTRUCTING AND FINANCING THE IMPROVEMENTS

**Section 4.1 Agreement to Construct Improvements.** The Authority will proceed with, and will complete as promptly as practicable,

(a) the construction, wholly within the boundary lines of the Site, of the Improvements, substantially in accordance with plans and specifications therefor to be furnished by the County; and

(b) the acquisition and installation of the Improvements and the Equipment, such acquisition and installation to be made as directed by the County,

and will pay, solely out of the principal proceeds derived by it from the sale of the Warrants or any Additional Warrants issued for such purpose, the costs of such construction, acquisition and installation.

The County may, after the execution and delivery hereof, cause such changes to be made to the aforesaid plans and specifications as it may desire and as will not result in any material change in the appearance or basic design of the Improvements or in changing its character as a part of a "project" under the provisions of the Act, and cause such changes to be made in the Equipment, including additions thereto, deletions therefrom and substitutions therefor, as it may desire and as will not cause the Equipment, as altered by such changes, to be, in the reasonable judgment of the County, functionally inferior (insofar as the operation of the Facility and the Improvements are concerned) to the Equipment prior to such changes. Except as provided in the preceding sentence, neither the County nor the Authority will cause or permit any changes to be made to the aforesaid plans and specifications.

The Authority will not hereafter enter into any contract for such construction, acquisition and installation, or any part thereof, unless there is endorsed thereon a legend indicating that the County has approved both the form and substance of such contract or order and such legend is signed on behalf of the County by its Chairman. The County and the Authority will cooperate with each other in order that the construction of the Improvements and the acquisition and installation of the Equipment may be completed as promptly as practicable.

**Section 4.2 Agreement to Issue Warrants.** In order to provide funds for the financing of the costs of the Facility, the costs of acquiring and installing the Equipment therein and the other Improvements, the Authority will, simultaneously with the delivery hereof, issue and sell the Warrants in accordance with the provisions of the Indenture.

**Section 4.3 No Warranty of Suitability by Authority.** The County recognizes that since the plans and specifications for the Facility have been prepared to its order and that since the items of Equipment have been and are to be selected by it, the Authority can make no Warranty, either express or implied, or offer any assurances that the Facility or the Equipment will be suitable for the County's purposes or needs or that the proceeds derived from the sale of the Warrants will be sufficient to pay in full all the Development Costs. In the event said proceeds issued for such purpose are insufficient to pay all said costs, the County

(a) will, subject to the provisions of the second paragraph of Section 4.1 hereof, use its best efforts to cause such changes to be made in said plans and specifications as will result in the Development Costs not exceeding the moneys available for payment thereof derived from the sale of the Warrants, or

(b) will use its best efforts to cause the Authority to issue and sell Additional Warrants in such principal amounts as may be necessary to provide for the payment of all Development Costs, or

(c) will take such action pursuant to both of the courses of action described in the preceding clauses (a) and (b) as will enable (i) the construction, furnishing and equipping of the Facility to be completed to such extent that it may be used by the County for the general purposes for which it was designed and (ii) the Development Costs to be paid in full.

Nothing herein contained shall be construed to impose any obligation on the Authority to incur, or to take any actions which will result in incurring, any costs or expenses in connection with the construction, furnishing and equipping of the Facility other than such costs and expenses as will not exceed the moneys available for payment thereof derived from the sale of the Warrants.

The County shall not be or become obligated to pay any Development Costs, or to make any arrangements (other than the execution and delivery of this Lease Agreement in connection with the issuance of the Warrants) for the financing of any Development Costs, or to undertake the completion of any part of the construction, furnishing and equipping of the Facility because of any relationship it may have with the Authority, under this Lease Agreement or otherwise, in connection with the Facility, including, without limiting the generality of the foregoing, its inducement of the Authority to undertake the construction of the Facility and to lease the same to the County, its control of the preparation of the plans and specifications for the construction, furnishing and equipping of the Facility, or any changes which it may have, pursuant to the provisions of this Lease Agreement, caused to be made to said plans and specifications. Further, the County shall not, by reason of any changes that it may have caused to be made in said plans and specifications or any other actions that it may have taken or failed to take in connection with the construction, furnishing or equipping of the Facility, be or become obligated to renew this Lease Agreement for any Renewal Term or to pay any rental for the use and occupancy of the Facility in addition to that specifically provided for herein.

**ARTICLE V**  
**EFFECTIVENESS OF LEASE AGREEMENT, RENEWAL TERMS, AGREEMENT TO ISSUE**  
**WARRANTS AND LEASE RENTAL**

**Section 5.1 Initial Term.** The Authority and the County hereby acknowledge that the initial term of this Lease Agreement shall begin on the date of delivery of this Lease Agreement and shall end on September 30, 2020.



**Section 5.2 Options to Renew.** After the expiration of the Initial Term, the County shall have the option to renew this Lease for a term of twelve months beginning on October 1, 2020, and continuing for each consecutive twelve month period until and including September 30, 2045, and shall have the further option from year to year thereafter to renew this Lease for successive terms of twelve months each, each such term to coincide with the fiscal year of the County beginning on October 1 and continuing until and including the then next succeeding September 30; provided however, that if this Lease shall not be renewed for any of the terms provided for herein, this Lease shall thereupon terminate and no renewal may thereafter be made for any subsequent term. Such option to renew this Lease for any such fiscal year shall be deemed to have been exercised and shall therefore be automatically exercised in either of the following events: (a) if the County continues in occupancy of the Facility on the first day of such fiscal year; (b) if, on or prior to the first day of such fiscal year, the governing body of the County shall adopt a resolution electing to exercise such option for such fiscal year; or (c) if the County, pursuant to the provision of this Section 5.2 hereof, pays all or any part of the Basic Rent referable to that Renewal Term prior to the commencement thereof.

**Section 5.3 Agreement to Issue Warrants.** In order to provide for the payment of the costs of constructing the Facility and acquiring and installing the Equipment and the other Improvements, the Authority will, simultaneously with the delivery of this Lease Agreement, issue and sell the Warrants and will execute and deliver the Indenture. All the terms and conditions of the Indenture (including in the case of the Indenture, those provisions thereof, but without limitation thereto, relating to the amounts and maturity dates of the principal of the Warrants, the interest rate or rates thereof and the provisions for the redemption thereof prior to their respective maturities) are hereby approved by the County, and to the extent that any provisions of the Indenture are relevant to the calculation of any rental or other sum payable by the County hereunder or to the determination of any other obligation of the County hereunder, the County hereby agrees that such provisions shall be deemed a part of the Lease as fully and completely as if set out herein.

**Section 5.4 Rental Provisions.** The County will pay as rent for use and occupancy of the Facility not later than the 15th day of each month during which this Lease Agreement is in effect, as rent during each Renewal Term, if any, an amount equal to the debt service on the Warrants by paying (i) one-sixth of the interest coming due with respect to the Series 2020 Warrants on the next succeeding interest payment date during such fiscal year and (ii) one-twelfth of the principal (if any) of the Series 2020 Warrants maturing or subject to mandatory redemption on the next succeeding principal payment date during such fiscal year.

There shall be credited on the rental for any period the amount on deposit in the Warrant Fund not previously credited on any rental payment from amounts referable to accrued interest or interest earnings derived from the investment of amounts on deposit in the Warrant Fund. In the event that amounts on deposit in the Warrant Fund on any Principal or Interest Payment Date are insufficient to pay the principal of and interest on the Warrants on such Principal or Interest Payment Date, the County will deposit into the Warrant Fund the amount of such insufficiency but solely out of the revenues of the County received during the fiscal year of the County during which such deposit is required to be made.

(c) As additional rental during the Initial Term and during each Renewal Term thereafter in which this Lease shall be renewed as provided in Section 5.2 hereof, the County will pay:

(1) all premiums for the insurance provided for in Section 6.4 hereof, such premiums to be paid directly to the insurer or insurers;

(2) all expenses necessary to maintain the Facility and each part thereof and to keep the same in good repair, all such expenses to be paid from time to time as payment of such expenses

becomes due directly to the persons furnishing services or material, or both, for such maintenance, repair and upkeep;

(3) all taxes and public improvement assessments against the Project that may become due and payable, any such taxes and assessments to be paid when due directly to the official to whom the said taxes or assessments, as the case may be, are required to be paid;

(4) the administrative expenses of the Authority for the Initial Term or the then current Renewal Term, as the case may be, all such administrative expenses to be paid directly to or on the order of the Authority as payment for such expenses becomes due;

(5) any special or extraordinary charges or extraordinary expenses of the Trustee, such extraordinary charges or extraordinary expenses to be paid directly to the Trustee as payment therefor becomes due;

(6) any rebate or other payments required to be made to the United States of America in order that the Warrants be and remain exempt from Federal income taxation; and

(7) all other charges which, if not paid, would form the basis for a charge or lien on the revenues of the Facility, the said charges to be paid directly to the person or persons to whom such charges are due;

provided, that the County shall be entitled to certain credits on the rental herein required to the extent provided in Section 10.2 of the Indenture.

The obligation of the County to pay the rental provided for herein for any fiscal year of the County during which this Lease shall be in effect and to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Authority. The obligation of the County to pay rent for any term for which the Lease maybe renewed pursuant to the provisions hereof shall not be contingent upon the Facility being placed in service.

Nothing herein contained shall be construed as imposing on the Authority or on the Trustee any duty or responsibility of giving any notice to the County of the amount on deposit in the Warrant Fund, or of the amount of any other credits against rental available to the County, as of any rental payment date, but the Authority will cause the Trustee to respond to any reasonable request that the County may make for such information. Neither the Authority nor the Trustee shall be obligated to give any prior notice to the County of the due date or amount of any installment of rental hereunder (or the date on which any such installment becomes delinquent), and failure to receive any such prior notice, even if customarily given by the Authority or the Trustee, shall not relieve the County of its obligation to pay such installment of rental when it is due and payable.

So long as the Warrants is outstanding, all rental payments due hereunder by the County shall be made directly to the Trustee, for the account of the Authority (except as otherwise specifically provided above in part (c) of this section with respect to certain items of additional rent). The Authority will, promptly following the designation of any successor Trustee under the Indenture, give written notice to the County of the name and location of the principal corporate trust office of such successor Trustee, or it will cause such notice to be promptly given. In the event the due date of any installment of rental payable hereunder is a Sunday or legal holiday in Alabama, such installment shall be due on the next succeeding business day.

**Section 5.5 Limited Obligation; Limited to Current Revenues; County Budget .**

The obligation on the part of the County to pay the rental required to be paid, and to perform the agreements on the part of the County herein required to be performed during any fiscal year of the County during which this lease is in effect, shall constitute a limited obligation of the County, payable solely out of the revenues and receipts received by the County during the fiscal year of the County during which any such amount is payable. The County intends to cause this Lease to be included within the County budget each fiscal year of the County during which this Lease is in effect.

**ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, FOR EACH FISCAL YEAR FOR WHICH THIS LEASE AGREEMENT IS IN EFFECT, THE PAYMENTS AND OBLIGATIONS OF THE COUNTY FOR SUCH FISCAL YEAR SHALL BE PAYABLE SOLELY FROM AND PERFORMED SOLELY OUT OF THE CURRENT REVENUES OF THE COUNTY FOR SUCH FISCAL YEAR.**

**NOTHING HEREIN CONTAINED, INCLUDING PARTICULARLY, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY REFERENCE TO THE WARRANTS OR THE INDENTURE, SHALL BE CONSTRUED AS IMPOSING UPON THE COUNTY ANY OBLIGATION TO PAY OR OTHERWISE PROVIDE FOR THE RETIREMENT OF ANY OF THE WARRANTS OR TO RENEW THIS LEASE AGREEMENT FOR ONE OR MORE RENEWAL TERMS. THE COUNTY SHALL HAVE NO OBLIGATIONS UNDER THIS LEASE AGREEMENT EXCEPT THOSE SPECIFICALLY PROVIDED FOR HEREIN WITH RESPECT TO THE INITIAL TERM AND ANY RENEWAL TERM FOR WHICH THE COUNTY SHALL HAVE EXERCISED ITS OPTION TO RENEW THE LEASE HEREIN MADE.**

**Section 5.6 This Lease Not a Debt.** The State of Alabama shall not in any manner be liable for any obligations or agreements contained in this Lease. The rental payable and the covenants to be performed by the County under the provisions hereof shall never create a debt of the County within the meaning of Section 224 of the Constitution of the State of Alabama.

**Section 5.7 Notice to Trustee of Certain Actions.** The County agrees to notify the Trustee in the event that any action is taken or authorized to be taken by or on behalf of the County to cease to occupy the Project in accordance with the provisions of this Lease, such notice to be given within three (3) days following the date on which any such action is taken or authorized to be taken by or on behalf of the County.

**Section 5.8 Budgeting of Rental Payments.** The County agrees to include in its annual budget funds sufficient to make the rental payments herein required to be made for each fiscal year of the County during which this Lease Agreement is or is intended to be in effect.

**ARTICLE VI**

**MAINTENANCE, TAXES AND INSURANCE**

**Section 6.1 Maintenance, Additions, Alterations and Improvements.** During the Initial Term and any Renewal Term for which this Lease Agreement shall be in effect, the County will, at its own expense, (a) keep the Project in as reasonably safe condition as is reasonable for a public building of such size and character, and (b) subject to the provisions of Section 6.2 hereof, keep the Facility, the Equipment and the other improvements located on the Site in reasonable repair and operating condition (reasonable wear and tear excepted), making from time to time all necessary and proper renewals thereto (including, without limitation, exterior and structural repairs, renewals and replacements); provided

however, that all such renewals, replacement and repairs shall be payable solely out of the current revenues of the County for the fiscal year of the County (or part thereof) corresponding to the Initial Term or any Renewal Term during which the County's obligation to pay such costs and expenses may have accrued; provided, further, that nothing contained in this sentence shall be construed to require the County to make any renewals, repairs or replacements that are elsewhere in this Lease Agreement expressly required to be made by the Authority. The County may, also at its own expense, make any additions, alterations or improvements to the Facility that it may deem desirable for its purposes, that do not adversely affect the structural integrity of any building or other structure forming a part of the Facility, and that will not impair the operating unity of the Facility, substantially reduce its value or change its character as a "project" under the Act; provided that all such additions, alterations or improvements shall

(1) be located wholly within the boundary lines of the Site, or

(2) be located wholly within the boundary lines of other adjacent real property hereafter acquired by the Authority, leased to the County by the Authority and subjected to the demise of these presents and to the lien of the Indenture and with respect to which the Authority and the Trustee have been furnished with an opinion of Counsel or a policy of title insurance satisfactory to each of them to the effect that the Authority has good and marketable title thereto, subject only to the lien of the Indenture and Permitted Encumbrances, or

(3) be located wholly within the boundary lines of the Site and such other adjacent real property.

Any such adjacent real property so subjected to the demise hereof and to the lien of the Indenture shall henceforth be considered, for purposes of this Lease Agreement, as part of the Site. All such additions, alterations and improvements so made by the County shall become a part of the Facility. The County will not, during the Initial Term or any Renewal Term for which the Lease herein made shall be in effect, permit any mechanics' or other liens to stand against the Facility for labor or materials furnished it in connection with any additions, alterations, improvements, repairs or renewals so made by it. During any such term, the County may, however, at its own expense and in good faith, contest any such mechanics' liens or other liens and in the event of any such contest may permit any such liens to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom unless by such action the lien of the Indenture to any part of the Facility shall be endangered or any part of the Facility shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall be promptly satisfied.

**Section 6.2 Removal of Equipment.** The Authority and the County recognize that items of the Equipment may from time to time become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Project. In any instance where the County in its sole discretion determines that any item of Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Project,

(a) The County may (if no event of default has occurred and is continuing, without the necessity of any consent or approval by the Authority or the Trustee) remove such item of Equipment from the Site and (on behalf of the Authority) sell, trade in, exchange or otherwise dispose of it without any responsibility or accountability to the Authority or the Trustee therefor, provided that the County substitutes and installs in the Project or on the Site (either by direct payment of the costs thereof or by advancing to the Authority the funds necessary therefor, as hereinafter provided) other equipment or personal property having equal or greater utility (but not necessarily the same value or function) in the operation of the Project for its intended purposes as hereinabove provided, which such substituted equipment or other personal property shall be free of all liens and encumbrances (other than the lien of the

Indenture and Permitted Encumbrances), shall be the sole property of the Authority, shall be and become a part of the Equipment subject to the demise hereof and to the lien of the Indenture, and shall be held by the County on the same terms and conditions as the items originally comprising the Equipment; or

(b) The County may (if no event of default has occurred and is continuing, without the necessity of any consent or approval by the Authority or the Trustee) remove such item of Equipment from the Site and (on behalf of the Authority) sell, trade in, exchange or otherwise dispose of it, without any responsibility or accountability to the Authority or the Trustee therefor and without being required to substitute and install in the Project or on the Site other equipment or personal property in substitution therefor, provided that either (i) such item of Equipment has an individual book value (cost less accumulated depreciation calculated in accordance with generally accepted accounting principles, as determined for financial reporting purposes) of \$10,000 or less as of the date of its removal from the Project, or (ii) all such removed items have an aggregate book value (determined as of the respective dates of their removal) not exceeding \$500,000.

Any of the preceding provisions of this Section 6.2 to the contrary notwithstanding, the County shall not exercise the right to remove items of Equipment in such manner as to impair to a significant and substantial degree the utility or habitability of the Project.

The preceding provisions of this Section 6.2 shall apply only so long as any of the Warrants or any Additional Warrants are outstanding under the Indenture. After payment of all warrants outstanding under the Indenture (including provision for such payment as described in the Indenture), the County may, if in its sole discretion any item of the Equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary in the operation of the Project for its intended purposes, remove such item of Equipment from the Site and (on behalf of the Authority) sell, trade in, exchange or otherwise dispose of it, without any responsibility or accountability to the Authority therefor and without being required to substitute and install in the Project or on the Site other equipment or personal property in substitution therefor and may retain any money or other consideration received by it upon any disposition of any such item of Equipment.

In any case where the County is herein required to purchase, install and substitute in the Project or on the Site any item of equipment, it may, in lieu of purchasing and installing said equipment or other personal property itself, advance to the Authority the funds necessary therefor, whereupon the Authority will purchase and install such equipment in the Project or on the Site.

Nothing contained herein shall prohibit the County, at any time during which it is not in default hereunder, from removing from the Site any equipment that is owned by it or leased by it from third parties and that does not constitute part of the Equipment, provided (1) that such equipment may be removed without adversely affecting the structural integrity of any building or other structure forming a part of the Project or causing any material damage to any such building or structure or to the Site, or (2) that if such removal will result in adversely affecting the structural integrity of any such building or other structure or in causing any material damage to any such building or structure or to the Site, the County promptly after such removal takes such action as is necessary to restore the structural integrity of such building or structure or to repair such damage, as the case may be.

**Section 6.3 Taxes, Other Governmental Charges and Utility Charges.** The County will pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever that may lawfully be assessed or levied against or with respect to the Project that may become due and payable during the Initial Term or any Renewal Term for which the Lease herein made shall be in effect (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the Project which, if not paid, would become a lien on the Project prior to or on a parity with the lien of

the Indenture or a charge on the revenues and receipts therefrom prior to or on a parity with the charge thereon and pledge and assignment thereof to be created and made in the Indenture), (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County shall be obligated to pay only such installments as are required to be paid during the Initial Term or during any Renewal Term for which the Lease herein made shall be in effect.

The County may, at its own expense and in its own name and behalf or in the name and behalf of the County, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless by such action the title of the Authority to any part of the Project shall be materially endangered or the Project or any part thereof shall become subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid prior to their becoming delinquent. The Authority will cooperate fully with the County in any such contest.

**Section 6.4 Insurance.** The County will, at all times while this Lease Agreement is in effect, maintain in effect, or cause to be maintained in effect, insurance against loss or damage to the Facility by fire and lightning, with uniform standard extended coverage endorsement limited only as may be provided in the broad form of extended coverage endorsement at the time in use in Alabama,

(a) insurance against loss or damage to the Facility by fire and lightning, with uniform standard extended coverage endorsement limited only as provided in the broad form of extended coverage endorsement at the time in use in the State of Alabama, (i) to such extent as is necessary to provide for full payment of the costs of repairing or replacing the property damaged or destroyed, or (ii) to the extent of the full replacement value of the Facility, whichever of the foregoing (i) or (ii) is the greatest and is available; and

(b) comprehensive public liability insurance for injury or death to third parties or damage to their property as a result of occurrences on or about the Project in an amount not less than \$1,000,000.00.

The County may be self-insured with respect to public liability insurance of the type described in the preceding clause (b) if it creates and continues to maintain (or causes to be created and continuously maintained) separate reserves therefor in amounts which, in the sole discretion of the County, are reasonable.

All policies evidencing the insurance required by the terms of the preceding paragraph shall be taken out and maintained in generally recognized responsible insurance companies, qualified under the laws of the State of Alabama to assume the respective risks undertaken, and may be written with deductible amounts comparable to those on similar policies carried by persons engaged in businesses of the size and type of the County. All such insurance policies, other than those evidencing the insurance required by clause (b) of the preceding paragraph and such other policies or portions thereof as may evidence insurance against liability for injury to persons or property of others, shall name as insureds the Authority, the Trustee and the County (as their respective interests shall appear) and shall contain standard mortgage clauses providing for all losses thereunder to be paid to the Trustee; provided that all losses may, at any time during which this Lease Agreement is in effect, be adjusted by the County, subject to the written approval of the Trustee. Anything herein to the contrary notwithstanding, any insurance required by the provisions hereof may be evidenced by a blanket policy covering risks in addition to those hereby required to be covered, but only if appropriate allocation certificates and loss

payable endorsements are furnished to the Authority and the Trustee.

All policies evidencing the insurance required by the terms of the first paragraph of this Section 6.4 shall contain an agreement on the part of the insurer issuing such policy that the same shall not be cancelled by such insurer unless thirty (30) days' prior written notice of such cancellation shall have been given to the Authority and the Trustee.

All policies evidencing the insurance required to be carried by the preceding provisions of this section (with premiums therefor until and including the then next succeeding September 30 paid in advance) shall be deposited with the Trustee (i) on the effective date of this Lease Agreement [or, in the event that there is then in effect so-called "builder's risk insurance" of the type referred to in the next succeeding paragraph, the earliest date thereafter on which the County is required by the provisions of this section to maintain (or cause to be maintained) the insurance required by the preceding provisions of this section], and (ii) on the first day of each Renewal Term thereafter during which this Lease Agreement is in effect, except that, in lieu of any of such policies, the County may deposit or cause to be deposited with the Trustee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect, with all premiums paid as aforesaid. Prior to the expiration or cancellation of any such policy, the County will furnish or cause to be furnished to the Trustee evidence reasonably satisfactory to the Trustee that such policy has been renewed or replaced by another policy or that there is no necessity therefor under this Lease Agreement.

Any of the provisions of this Lease Agreement to the contrary notwithstanding,

(1) the County shall not, until the Completion Date, be required to maintain (or cause to be maintained) any of the insurance that would otherwise be required hereby so long as there shall be in effect so-called "builder's risk insurance" substantially equivalent to the insurance that would otherwise be required to be maintained by the County hereunder, it being understood and agreed, however, that if at any time prior to the Completion Date no such "builder's risk insurance" is in effect, the County shall be required to maintain (or cause to be maintained) insurance of the type and character referred to in the preceding provisions of this Section 6.4; and

(2) any proceeds derived from any such "builder's risk insurance" shall be applied as provided in the related construction contract.

**Section 6.5 Advances by Authority or Trustee.** In the event the County fails during the Initial Term or any Renewal Term for which this Lease Agreement shall be in effect, to take out or maintain the full insurance coverage required by this Lease Agreement or fails to keep the Facility in a safe condition as is reasonable for a facility of such size and character or the Facility, the Equipment and the other improvements located on the Site in reasonable repair and operating condition, the Authority or the Trustee, after first notifying the County of any such failure on its part and after the subsequent failure by the County to take out or maintain such insurance or to take action reasonably calculated to keep the Facility in a safe condition as is reasonable for a facility of the size and character of the Facility or the Facility, the Equipment and the other improvements located on the Site in reasonable repair and operating condition, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same or make such repairs, renewals and replacements as may be necessary to maintain the Facility in as reasonably safe condition as the County's operations permit and the Facility, the Equipment and the other improvements located on the Site in reasonable repair and operating condition, respectively; and all amounts so advanced therefor by the Authority or the Trustee shall become an additional obligation of the County to the Authority or to the Trustee, as the case may be, which amounts, together with interest thereon at the rate of ten per cent (10%) per annum from the date thereof, the County will pay; provided, that any such additional obligation of the County shall be payable

solely out of the current revenues of the County for the fiscal year of the County during which such obligation shall be incurred. Any remedy herein vested in the Authority or the Trustee for the collection of rental payments shall also be available to the Authority and the Trustee for the collection of all such amounts so advanced.

## **ARTICLE VII PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION**

**Section 7.1 Damage and Destruction Provisions.** If the Facility or any of the Equipment is destroyed, in whole or in part, or is damaged, by fire or other casualty, the County will promptly so notify the Trustee in writing. If, in such event, the County is not entitled to exercise its right to require the Authority to redeem and retire all the then outstanding Warrants granted in Section 11.1 hereof or if, in such event, being entitled to, it does not exercise such option, the Net Insurance Proceeds shall be paid to and held by the Trustee (or, if the Warrants have been fully paid, the Authority), whereupon

(i) the Authority will proceed, as promptly as practicable under the circumstances and under such terms, conditions and contracts as shall be approved by the County, to repair, rebuild or restore the property damaged or destroyed to substantially the same condition as prior to the event causing such damage or destruction, with such changes, alterations and modifications as shall be specified by the County and as will not change the character of the Facility as a "project" under the Act; provided, that the County shall not cause any such changes, alterations or modifications to be made which would cause the costs of repairing, replacing, rebuilding or restoring the property damaged or destroyed to exceed the Net Insurance Proceeds referable thereto, unless the County pays, or provides funds to the Authority for payment of, the amount by which such costs exceed such insurance proceeds, and

(ii) the Trustee will apply the Net Insurance Proceeds to payment of the costs of such repair, rebuilding or restoration.

Any balance of the Net Insurance Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be paid into the Warrant Fund and applied to the redemption of Warrants on the earliest date on which they are by their terms subject to redemption.

The Authority's obligation to pay costs of repairing, restoring or rebuilding any property damaged or destroyed shall be limited solely to the Net Insurance Proceeds referable thereto, plus any funds that may be contributed for such purpose. If, after being furnished with the necessary funds (whether from insurance proceeds or from other sources), the Authority fails or refuses after reasonable request so to take any action required to repair, rebuild or restore the property damaged or destroyed, the County may, for and in the name and behalf of the Authority, take such action as is required to accomplish such repair, rebuilding or restoration, in which case it shall be entitled to reimbursement for the costs thereof from the funds referred to above, to the extent such funds are sufficient therefor. In no event shall the Authority undertake the work of any repair, rebuilding or restoration unless and until (i) it has been notified in writing by the County that the County irrevocably relinquishes any right it may have, on account of such damage or destruction, to exercise the option granted in Section 11.1 hereof to require the Authority to redeem and retire all then outstanding Warrants, or (ii) the time within which the County must exercise such option has expired without the County having exercised such option. If, however, as a result of such damage or destruction, the County is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 11.1, the Authority shall not be required to repair, rebuild or restore the property damaged or destroyed, in which event so much (which may be all) of any Net Insurance Proceeds referable to such damage or destruction as shall be necessary to provide for full retirement of the Warrants (as specified in Section 11.1 hereof) shall be paid or credited by the



Trustee into the Warrant Fund and the excess thereafter remaining (if any) shall be paid to the County after retirement of all outstanding Warrants.

**Section 7.2 Condemnation Provisions.** If the Facility or any part thereof is taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority, the entire condemnation award referable to the Facility shall be paid to the Trustee and applied as hereinafter provided:

(a) Taking of All or Substantially All the Facility. If title to all or substantially all the Facility is taken by such eminent domain proceeding, this Lease Agreement shall terminate as of the date the condemning authority enters into possession of the Facility. If the Net Condemnation Award plus all amounts in the Warrant Fund and the Construction Fund (if any) are sufficient to pay and retire all the then outstanding Warrants, the Trustee shall take such action as may be necessary under the provisions of Article VI of the Indenture to call for redemption all the outstanding Warrants on the forty-fifth (45th) day after the condemning authority enters into possession of the Facility or after the receipt by the Trustee of the entire final condemnation award, whichever is later, and the Trustee shall segregate and set aside in the Warrant Fund (out of moneys therein, in the Construction Fund and the Net Condemnation Award) all moneys that may be available to provide for retirement of the Warrants. Any balance of the said moneys remaining after full payment of all the outstanding Warrants shall be paid to the County. If, however, the total of such amounts is not sufficient to pay and retire all the then outstanding Warrants, the Trustee will apply such amounts in accordance with Section 14.3 of the Indenture.

The County shall not, on account of being deprived of the use and occupancy of the Facility as the result of the taking by eminent domain of all or substantially all thereof, be entitled to any rebate of any Basic Rent applicable to the Initial Term or any Renewal Term that it may have, prior to such taking, paid to the Trustee for the account of the Authority. If, however, the sum of the Net Condemnation Award and the amounts in the Warrant Fund and the Construction Fund (if any) exceeds the sum needed to retire all the then outstanding Warrants (including, without limitation thereto, principal, premium (if any), interest to maturity or earliest practicable redemption date (as the case may be), expenses of redemption and Trustee's fees, charges and disbursements) in accordance with the applicable provisions of the Indenture, then such excess shall be paid to the County after all the then outstanding Warrants have been retired.

(b) Taking of Less Than All or Less Than Substantially All the Facility. If title to less than all or less than substantially all the Facility is taken by such eminent domain proceeding, this Lease Agreement (including, without limitation, the options of the County to renew the Lease herein made for successive Renewal Terms and the obligation of the County to pay the Basic Rent applicable to the Initial Term and all Renewal Terms for which said Lease shall be in effect) shall continue in full force and effect but with the following consequences;

(1) If no part of the Facility is taken or damaged and if in the County's opinion the use of the Facility is not impaired by such taking, the Net Condemnation Award referable thereto shall be paid into the Warrant Fund and applied to the redemption of Warrants on the earliest date on which they are by their terms subject to redemption.

(2) If any part of the Facility is taken or damaged or if in the County's opinion the use of the Facility is impaired by such taking, the Authority will proceed, as promptly as practicable under the circumstances and upon such terms as shall be approved in writing by the County, to repair, rebuild or restore the portion or portions of the Facility taken or damaged or to rearrange the Facility and any other facilities then forming a part of the Facility so as to make them suitable for the use of the County (provided that the County shall not prescribe terms and conditions for such repair, replacement,

rebuilding, restoration or rearrangement which would cause the costs thereof to exceed the Net Condemnation Award referable to such taking unless the County pays, or provides for the payment of, the amount by which such costs exceed such condemnation award) and the Trustee will apply the Net Condemnation Award referable to such taking to payment of the costs of such repair, rebuilding, restoration or rearrangement. If the Net Condemnation Award is in excess of the costs of such repair, rebuilding, restoration or rearrangement, the excess shall be paid into the Warrant Fund and applied to the redemption of Warrants on the earliest date on which they are by their terms subject to redemption. The Authority's obligation to pay the costs of such repair, replacement, rebuilding, restoration or rearrangement shall be limited solely to the Net Condemnation Award, plus any funds that may have been contributed to it for such purpose. If, after being furnished with the necessary funds (whether from condemnation proceeds or from other sources), the Authority fails or refuses after reasonable request so to repair, rebuild or restore the Facility or to rearrange the facilities forming a part of the Facility so as to make them suitable for the use by the County, the County may, for and in the name and behalf of the Authority, perform the work of such repair, rebuilding, restoration or rearrangement, in which case it shall be entitled to reimbursement for the costs thereof from the funds referred to above, to the extent that such funds are sufficient therefor. The preceding provisions of this subparagraph (2) to the contrary notwithstanding, in no event shall the Authority undertake the work of any repair, rebuilding, restoration or rearrangement thereunder unless and until (A) it has been notified in writing by the County that the County irrevocably relinquishes any right it may have, on account of such condemnation, to exercise the option to require the Authority to redeem and retire all the then outstanding Warrants granted in Section 11.1 hereof, or (B) the time within which the County must exercise such option has expired without the County having exercised such option. If, however, as result of such taking, the County is entitled to exercise such option and duly does so in accordance with the applicable provisions of said Section 11.1, then the Authority shall not be required to repair, rebuild or restore the Facility or to rearrange the portion or portions of the Facility so damaged or taken nor shall any of the other said provisions of this subparagraph (2) apply in such case, and so much (which may be all) of the Net Condemnation Award referable to such taking as may be necessary to provide for full payment and retirement of the Warrants (as specified in Section 11.1 hereof) shall be paid or credited by the Trustee into the Warrant Fund and the excess thereafter remaining (if any) shall be paid to the County after all the outstanding Warrants have been retired.

The Authority will cooperate fully with the County in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Facility or any part thereof and will follow all reasonable directions given to it by the County in connection with such proceeding. In no event will the Authority settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Facility or any part thereof without the prior written consent of the County.

**Section 7.3 County Obligations Upon Event of Damage or Condemnation.** In the event of damage to or destruction of the Facility or any part thereof or the taking of less than all or less than substantially all the Facility through eminent domain proceedings, the County shall not be or become obligated to pay, or to make any arrangements for the payment of, any of the costs of repairing, replacing, rebuilding or restoring the property damaged, destroyed, or taken or any of the costs of rearranging the Facility or any other facilities then forming a part of the Facility, nor shall it be or become obligated to renew the Lease herein made for any Renewal Terms commencing after the occurrence of such damage, destruction or taking, and the exercise by the County of any of its rights hereunder (including, without limiting the generality of the foregoing, its exercise of the right herein granted to have such repair, replacement, rebuilding, restoration or rearrangement carried out in accordance with its requirements) shall not be deemed to impose any obligations, either direct or consequential, on the County in connection with any such repair, replacement, rebuilding, restoration or rearrangement that may be undertaken by the Authority. If such damage, destruction or taking occurs during the Initial Term or any Renewal Term for which the Lease herein made shall be in effect, then in such event the County shall remain obligated to

pay the entire Basic Rent applicable to such term, even though it may be deprived of the use and occupancy of the whole or any part of the Facility during the remainder of such term. If prior to the occurrence of such damage, destruction or taking, the County shall have renewed the Lease herein made for a Renewal Term that commences after such occurrence, the County shall not be entitled to any rebate of any portion of the Basic Rent applicable to such term that it may have theretofore paid and it shall remain obligated to pay the entire Basic Rent applicable to such term, even though it may be deprived of the use and occupancy of the whole or any part of the Facility during the whole or any part of such term. If, after the occurrence of such damage, destruction or taking, the County exercises its option to renew the Lease herein made for any Renewal Term, it shall not be entitled to any reduction in the Basic Rent for such Renewal Term because during all or part thereof it may have been deprived of the use and occupancy of the Facility, in whole or in part, as a result of the Facility or any other facilities then forming a part of the Facility not having been restored to a usable condition.

**Section 7.4 Condemnation of Right to Use of Facility for Limited Period.** If the use, for a limited period, of all or part of the Facility is taken by any such eminent domain proceeding, this Lease Agreement (including, without limitation, the options of the County to renew the Lease herein made for successive Renewal Terms and the obligation of the County to pay the Basic Rent applicable to the Initial Term and all Renewal Terms for which said Lease shall be in effect) shall, unless as a result thereof the County is entitled to exercise the option to require the Authority to redeem all then outstanding Warrants granted in Section 11.1 hereof and duly does so in accordance with the provisions of said Section 11.1, continue in full force and effect, but with the consequences specified in the remaining provisions of this Section 7.4.

If such taking occurs during the Initial Term or any Renewal Term for which the Lease herein made shall be in effect, the County shall remain obligated to pay the entire Basic Rent applicable to such term, even though it may be deprived of the use and occupancy of the Facility for all or any part of the remainder of such term. If, prior to such taking, the County shall have renewed the Lease herein made for a Renewal Term that commences after such taking, the County shall not be entitled to any rebate of any portion of the Basic Rent applicable to such term that it may have theretofore paid and it shall remain obligated to pay the entire Basic Rent applicable to such term, even though it may be deprived of the use and occupancy of the whole or any part of the Facility during the whole or any part of such term. If, after such taking, the County shall exercise its option to renew the Lease herein made for any Renewal Term, it shall not be entitled to any reduction in the Basic Rent applicable to such Renewal Term for any portion of such term (which may be all) during which it may be deprived of the use and occupancy of the Facility, in whole or in part, because of the continuation of such taking. The County and the Authority will deposit in the Warrant Fund, or will cause to be deposited therein, the total of all condemnation awards that may, from time to time, be made to either or both of them as compensation for the taking of the use by or interest in the Facility of either of them, whether by way of damages, rent or otherwise, and all condemnation awards referable to such taking that are deposited in the Warrant Fund (whether initially received by the County, the Authority or the Trustee) shall be available as a credit on the Basic Rent payable by the County for any Renewal Term beginning after the deposit of such awards in the Warrant Fund. If such taking ends during the Initial Term or any Renewal Term for which the Lease herein made shall be in effect, the County shall restore the Facility as nearly as practicable to the condition existing immediately prior to such taking, with such changes, alterations and modifications as will not change the character of the Facility as a "project" under the provisions of the Act; provided, however, that all costs and expenses that the County may be obligated to pay with respect to such restoration shall be payable solely out of the current revenues of the County for the fiscal year of the County during which such taking ends.

**Section 7.5 Condemnation of County-Owned Property.** In the event the Facility or any part thereof is taken through eminent domain proceedings, the County shall be entitled to any

condemnation award or portion thereof made for damages to or takings of its own property, as well as all other sums awarded as compensation for the interest of the County in the part of the Facility taken and as damages to the interest of the County in any part thereof not taken (excluding, however, compensation and damages referable to the County's use of or interest in the Facility in the event of a taking of the Facility or any part thereof for a limited period), but there shall be deducted therefrom, or paid directly by the County, all attorneys' fees and other expenses incurred in connection with the receipt of such award or sum or portion thereof.

## ARTICLE VIII

### PARTICULAR COVENANTS OF THE COUNTY

**Section 8.1 General Covenants.** The County will not do or permit anything to be done on or about the Project that will affect, impair or contravene any policies of insurance that may be carried on the Project or any part thereof against loss or damage by fire, casualty or otherwise. The County will, in the use of the Facility and the Equipment and the public ways abutting the Site, comply with all applicable lawful requirements of all governmental bodies.

**Section 8.2 Release and Indemnification Covenants.** The County releases the Authority from, covenants that the Authority shall not be liable for, and agrees to hold the Authority harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned on account of any defect in the Facility, including any expenses incurred by the Authority in connection with the defense of any claim against it arising out of any such loss, damage, injury or death; provided, however, that the County shall have no liability pursuant to this Section 8.2 unless such liability shall be fixed, both as to the obligation of the County to pay such liability and as to the amount thereof, during the Initial Term on any Renewal Term for which this Lease Agreement shall be in effect; provided further that any liability of the County pursuant to this Section 8.2 shall be payable solely out of the current revenues of the County for the fiscal year of the County during which such liability becomes so fixed; provided further that nothing herein contained shall be construed to indemnify the Authority against, or to release the Authority from liability for, any loss or damage that may result from wanton misconduct on the part of the Authority or from its own intentional wrongful acts. The County will provide for and insure, pursuant to the public liability provisions of Section 6.4 hereof, not only its own liability in respect of the matters there mentioned but also the liability assumed pursuant to this Section 8.2. The Authority will not, without the prior written consent of the County, settle or consent to the settlement of any prospective or pending litigation for which the County is or may be obligated, under the provisions of this Section 8.2, to indemnify the Authority, and the County shall have full and complete control of any such litigation, including (without limitation) the right to select counsel for the Authority.

**Section 8.3 Inspection of Facility.** The County will permit the Authority, the Trustee and their duly authorized agents at all reasonable times to enter upon, examine and inspect the Facility. So long as any of the Warrants are outstanding and unpaid, the County will also permit the Trustee and its duly authorized agents to take such action as may be necessary and convenient to cause the Facility to be kept in as reasonably safe condition as is reasonable for a public building of the size and character of the Facility and the Equipment and the other improvements on the Site to be kept in reasonable repair and operating condition, all as and to the extent provided in Sections 6.1 and 6.5 hereof.

**Section 8.4 Further Assurances.** The County will, at its own cost and expense, take all actions that may at the time and from time to time be necessary to perfect, preserve, protect and secure the interests of the Authority and the Trustee, or either, in and to the Facility, including, without limitation, the filing of all financing and continuation statements. The County further agrees, without in

any way limiting the generality of the foregoing, to take any and all such actions that in the judgment of the Authority or the Trustee are necessary for the perfection, preservation, protection and securing of such interests.

**Section 8.5 Concerning Certain Actions Under the Indenture.** The County will not issue, or permit to be issued on its behalf, any instructions for the investments of any moneys in the Construction Fund or the Warrant Fund created in the Indenture if, as a result of any such investment being made in accordance therewith, the Warrants would be considered "arbitrage bonds" within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended.

**Section 8.6 Concerning Issuance of Additional Warrants.** The County and the Authority recognize that under the provisions of the Indenture, the Authority is authorized to issue one or more series of Additional Warrants on a parity with the Warrants, for certain purposes, provided that the conditions precedent specified in the Indenture are complied with. If the County is not in default hereunder, the Authority will, on the written request of the County and upon being furnished by the County with the documentation required therefor in subsections (c) and (d) of Section 8.2 of the Indenture, take such actions as are necessary to authorize the issuance and sale of such amount of Additional Warrants as is specified in such request and will use its best efforts to effect the sale thereof; provided that the interest rate or rates to be borne by such Additional Warrants and the purchase price to be paid therefor are approved in writing by the County.

**Section 8.7 Concerning the Code.** The County and the Authority recognize that the Internal Revenue Code of 1986 (the "Code") imposes certain conditions to the exemption from Federal income taxation of the interest income on the Warrants. Accordingly, the County and the Authority agree that each will continuously comply with all requirements imposed by the Code as a condition to the exemption from Federal income taxation of the interest income on the Warrants. Without in anyway limiting the generality of the foregoing, the County and the Authority

(a) covenant and agree that neither will take any action, or fail to take any action, which would cause the interest on any of the Warrants to be or become subject to inclusion in gross income for federal income tax purposes;

(b) will not permit the gross proceeds of the Warrants to be invested or reinvested in a manner that would cause the Warrants to "arbitrage bonds" within the meaning of Section 148 of the Code, and will make timely rebate payments to the United States of America as required by Section 148(f) of the Code; and

(c) will not apply or caused to be applied the proceeds of the Warrants that would cause any of the Warrants to be "private activity bonds" within the meaning of the Code, and will further not permit and federal prisoners to be housed at the Facility, and will further not enter into any agreement with any private party, including the federal government, with respect to the use of the Facility or the Project that would jeopardize the tax-exempt status of the Warrants. The County specifically covenants and agrees with the Authority that no federal prisoners will be housed at the Facility and that all federal prisoners held by the County will be held at a different facility of the County, for which there is currently much more than adequate space available.

**Section 8.8 Certain Limitation on Acquisition and Use of Similar Facilities.** The County agrees that it will not hereafter acquire, construct, lease or use any space (including specifically any space now or hereafter owned or leased by the County) in or about the County for the same purpose for which the Facility is intended to be used, except pursuant to a Supplemental Lease Agreement entered into between the County and the Authority pursuant to the Indenture.

**Section 8.9 Use of Building.** During the term of the Lease Agreement, the County will, in the use of the Facility, comply in all material respects with all lawful requirements of all governmental bodies and will not do or permit anything to be done that will impair or contravene any policies of insurance carried with respect to the Facility.

If any space in the Facility becomes vacant after acquisition of the Facility by the Authority, then until such time as all vacant space in the Facility shall have been utilized, neither the County nor any officer, department or agency thereof shall thereafter enter into any rental agreement, or renew any existing rental agreement for other space in or about Baldwin County, Alabama to be used for the same purpose for which such vacant space in the Facility is capable of being used.

## **ARTICLE IX**

### **CERTAIN PROVISIONS RELATING TO ASSIGNMENT AND MORTGAGING AND TO THE WARRANTS**

**Section 9.1 Mortgaging of Facility by Authority.** It is understood and agreed that the Authority will mortgage, on a non-foreclosable basis, the Facility to the Trustee as security for the payment of the Warrants, subject to this Lease Agreement (which Lease Agreement and the estate of the County hereunder shall be prior and superior to the lien of the Indenture), and will assign its interest in and pledge any moneys receivable under this Lease Agreement to the Trustee as security for payment of the principal of and the interest and premium (if any) on the Warrants. The County hereby agrees to such mortgage and assignment and understands that such mortgage and assignment shall not be foreclosable. It is further understood and agreed that the Authority will in the Indenture obligate itself to follow the instructions of the Trustee or the holders of the Warrants or a certain percentage thereof in the election or pursuit of any remedies herein vested in it. Upon the assignment and pledge to the Trustee of the Authority's interest in this Lease Agreement, the Trustee shall have all rights and remedies herein accorded the Authority and any reference herein to the Authority shall be deemed, with the necessary changes in detail, to include the Trustee, and the Trustee and the holders of the Warrants shall be deemed to be third party beneficiaries of the covenants and agreements on the part of the County herein contained. Subsequent to the issuance of the Warrants and prior to their payment in full, the Authority and the County shall have no power to modify, alter, amend or (except as specifically authorized herein) terminate this Lease Agreement without the prior written consent of the Trustee and then only as provided in the Indenture. The Authority will not, so long as the County is not in default hereunder, amend the Indenture or any indenture supplemental thereto without the prior written consent of the County.

Without the prior written consent of the County, the Authority will not, at any time while the County is not in default hereunder, hereafter issue any warrants, notes, or other securities (including refunding securities), other than the Warrants and any Additional Warrants, that are payable out of or secured by a pledge of the revenues and receipts derived by the Authority from the leasing or sale of the Facility, nor, without such consent, will the Authority, at any time while the County is not in default hereunder, hereafter place any mortgage or other encumbrance (other than the Indenture and supplemental indentures contemplated thereby) on the Facility or any part thereof. Neither the Authority nor the County will unreasonably withhold any consent herein or in the Indenture required of either of them.

**Section 9.2 References to Warrants Ineffective After Warrants Paid.** Upon full payment of the Warrants, all references in this Lease Agreement to the Warrants and the Trustee shall be ineffective and neither the Trustee nor the holders of any of the Warrants shall thereafter have any rights hereunder. For purposes of this Lease Agreement, any of the Warrants shall be deemed fully paid if there exist, with respect thereto, the applicable conditions specified in Section 17.1 of the Indenture.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

**Section 10.1 Events of Default Defined.** The following shall be "events of default" under this Lease Agreement, and the terms "event of default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(a) Failure by the County to pay the Basic Rent applicable to the Initial Term or any Renewal Term for which the Lease herein made shall be in effect, or the fees, charges or disbursements of the Trustee for its services, which failure shall result in funds not being available in the Warrant Fund sufficient to pay the principal of and interest on the Warrants on any Interest Payment Date; or

(b) Failure by the County to perform or observe any of its other agreements or covenants contained in this Lease Agreement, which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring the County to perform or observe the agreement or covenant with respect to which it is delinquent shall have been given to the County by the Authority or the Trustee, unless (i) the Authority and the Trustee shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, the County has commenced and is diligently pursuing appropriate corrective action, or (iii) the County is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent; or

(c) The filing by the County of a voluntary petition in bankruptcy, or failure of the County promptly to lift any execution, garnishment or attachment of such consequences as will impair operations at the Building, the seeking of or consenting to or acquiescing by the County in the appointment of a receiver of all, or substantially all, of the property thereof or of the Building or the adjudication of the County as a bankrupt, or any assignment by the County for the benefit of its creditors; or

(d) An event of default under the Indenture.

The term "force majeure" as used in subsection (b) of this section means acts of God or the public enemy, strikes, labor disputes, lockouts, work slowdowns or stoppages or other industrial disturbances, insurrections, riots or other civil disturbances, orders of the United States of America, the State of Alabama or any department, agency or political subdivision of either thereof, or of other civil or military authority, or partial or entire failure of public utilities.

**Section 10.2 Remedies on Default.** Whenever any such event of default shall have happened and be continuing, the Authority and the Trustee (or the Trustee on behalf of the Authority), with the written consent of the Insurer, may take any one or more of the following remedial actions:

(a) take possession of the Building and rent all or any part thereof for the account of the County for the remainder of the Initial Term or Renewal Term, holding the County liable for the balance

due under this Lease Agreement;

(b) terminate the Lease Agreement, take possession of the Building and lease the same for the account of the Authority, holding the County liable for all rent and other amount due under this Lease Agreement to the date such other lease is made for the account of the Authority;

(c) declare all installments of Basic Rent payable for the remainder of the Initial Term or Renewal Term immediately due and payable; and

(d) take whatever other actions at law or in equity may appear necessary or desirable to collect the rent then due or to enforce any obligation, covenant or agreement of the County under this Lease Agreement.

**Section 10.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

**Section 10.4 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. Further, neither the receipt nor the acceptance of rental hereunder by the Authority, or by the Trustee on its behalf, shall be deemed to be a waiver of any breach of any covenant or condition herein contained even though at the time of such receipt or acceptance there has been a breach of one or more covenants or conditions on the part of the County herein contained and the Authority or the Trustee (or both) have knowledge thereof.

## ARTICLE XI

### RIGHT OF COUNTY TO REQUIRE REDEMPTION OF WARRANTS

**Section 11.1 Right to Require Authority to Redeem Warrants in Certain Circumstances.** The County shall have, and is hereby granted, the right to require the Authority to effect the redemption and retirement of all the Warrants pursuant to Section 7.2 of the Indenture. To exercise such option, pursuant to Section 7.2(b), the County

(i) shall, within sixty (60) days following the event authorizing the exercise of such right under Section 7.2(b), give written notice to the Authority and the Trustee,

(ii) shall specify therein the date of redemption, which shall be not less than forty-five (45) nor more than ninety (90) days after the date such notice is mailed, and

(iii) shall five (5) days prior to the date fixed for redemption pursuant to the preceding clause (ii) pay to the Trustee (for the account of the Authority), as consideration for the exercise of the right to require the redemption and retirement of the Warrants, an amount which, when added to the total of the amounts on deposit in the Warrant Fund, the Reserve Fund and the Construction



Fund plus the amount of any Net Insurance Proceeds or Net Condemnation Award in the hands of the Trustee and referable to the damage, destruction or condemnation authorizing the exercise of such right, will be sufficient to pay, retire and redeem all the outstanding Warrants on the said date fixed for redemption, including, without limitation, principal, premium (if any), all interest to mature until and on such date, expenses of redemption and Trustee's reasonable fees, charges and disbursements;.

In the event that at the time of the exercise of any right herein granted, there have not been collected by the Authority, the Trustee or the County the entire insurance proceeds or condemnation award referable to any damage, destruction or condemnation authorizing the exercise of such option, all Net Insurance Proceeds and all Net Condemnation Awards thereafter collected and referable to such damage, destruction or condemnation shall be paid to the County, and the Authority will take all actions necessary to cause the amount of any such award or proceeds to be paid to the County. The provisions of this paragraph shall survive the expiration of the term of this Lease Agreement or any termination hereof unless at the time of such expiration or termination the County is in default hereunder.

**Section 11.2 Authority to Cause Warrants to be Redeemed.** In the event the County is entitled to, and does elect to cause the Warrants to be redeemed and retired pursuant to Section 11.1, the Authority agrees to take or cause to be taken all actions required to be taken pursuant to the Indenture to cause the Warrants to be redeemed and retired.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.1 Limited Effect of Lease on Obligation of County.** Neither the execution and delivery of this Lease Agreement nor any other actions taken by the County in connection with the issuance and sale of the Warrants shall obligate the County to renew this Lease Agreement for any Renewal Term following the Initial Term.

**Section 12.2 Assignment.** This Lease Agreement will be assigned and pledged by the Authority as security for the Warrants to be issued to finance the construction of the Facility and the acquisition of the items of Equipment. This Lease Agreement shall not be assigned by the County, and any instrument purporting or attempting to assign the interest of the County hereunder shall be void.

**Section 12.3 Termination of the Lease Upon Full Payment of Warrants.** Vesting of Title to Facility in County Upon full payment of the Warrants. (a) All references in this Lease Agreement to the Warrants and the Trustee shall be ineffective, and neither the Trustee nor the holders of any of the Warrants shall thereafter have any rights under this Lease Agreement, and this Lease Agreement shall terminate upon full payment of the Warrants. For purposes of this Lease Agreement, the Warrants shall be deemed fully paid if there exist with respect thereto the applicable conditions specified in Section 17.1 of the Indenture.

(b) The Authority and the County hereby acknowledge that the Act provides, as of the time of the delivery of this Lease Agreement, that in the event the Authority shall at any time have outstanding and unpaid warrants payable, in whole or in part, from the revenues derived from the Project, then, as and when the principal of and interest on all such warrants shall have been paid in full, title to the Project shall thereupon vest in the County. In order to conform this Lease Agreement to the aforesaid provision of the Act and in order to establish the County's right to the Project if, at such time as the Warrants shall have been fully paid, the Act does not then automatically vest title to the Project in the County, the Authority hereby conveys to the County all the Authority's right, title and interest in and to the Project, said right, title and interest to vest absolutely in the County upon full payment of the Warrants

and all other indebtedness of the Authority secured (in whole or in part) by a lien on the Project or payable (in whole or in part) out of the revenues derived by the Authority therefrom. The Authority and the County hereby further agree that the right, title and interest of the Authority in and to the Project shall, without further action on the part of the Authority, automatically vest in the County upon full payment of the Warrants and such other indebtedness. In no event, however, shall the County be entitled to claim or enforce any rights in the Project pursuant to the aforesaid conveyance by the Authority which would in any way impair the rights of the Trustee, the holders of any of the Warrants, or any creditors of the Authority with respect to any other indebtedness. The estate of the County created by such conveyance is in the nature of a contingent remainder, and such estate shall not merge with the lease estate of the County created by the Lease until all conditions precedent to its vesting shall have been satisfied, including, without limitation thereto, the satisfaction and discharge of the lien of the Indenture in accordance with the provisions of Section 17.1 of the Indenture. The Authority will, at the expense of the County, execute and deliver such further instruments and do such further acts as may be necessary or appropriate to perfect and secure the title of the County to the Project, if and when the County's right thereto vests absolutely pursuant to the provisions of this paragraph. The provisions of this paragraph shall survive any termination of the Lease resulting from the full payment of the Warrants. If, upon full payment and retirement of all the Warrants, any moneys then remain in any of the special funds created in the Indenture, and if the Lease remains in effect until the full payment and retirement of all the Warrants and the County is not then in default under the Lease, the Authority will cause the Trustee to pay all such moneys to the County, and the Authority hereby assigns all such moneys to the County.

**Section 12.4 Amendment of Lease Agreement** Any amendment of this Lease Agreement must comply with the applicable provisions of the Indenture.

**Section 12.5 Binding Effect.** This Lease Agreement shall inure to the benefit of and shall be binding upon the Authority, the County and their respective successors and assigns.

**Section 12.6 Severability.** In the event that any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed and construed to be severable from the remaining provisions of this Lease Agreement, with the intended result that such holding shall not invalidate or render unenforceable any other provisions of this Lease Agreement.

IN WITNESS WHEREOF, the Authority has caused this Lease Agreement to be executed by its President, has caused its corporate seal to be hereunto affixed, and has caused this Lease Agreement to be attested by its Secretary/Treasurer, both of whom are hereunto duly authorized, and the County has caused this Lease Agreement to be executed by its Chairman, has caused its corporate seal to be hereunto affixed, and has caused this Lease Agreement to be attested by its County Administrator, both of whom are hereunto duly authorized.

**THE PUBLIC BUILDING  
AUTHORITY OF BALDWIN COUNTY**

By \_\_\_\_\_  
Its President

SEAL

Attest:

\_\_\_\_\_  
Its Secretary/Treasurer

**BALDWIN COUNTY, ALABAMA**

By \_\_\_\_\_  
Chairman

SEAL

Attest:

\_\_\_\_\_  
County Administrator

STATE OF ALABAMA

COUNTY OF BALDWIN

I, a Notary Public in and for said county in said state, hereby certify that \_\_\_\_\_, whose name as President of THE PUBLIC BUILDING AUTHORITY OF BALDWIN COUNTY, a public corporation and instrumentality under the laws of the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
James T. Birchall, Notary Public

My commission expires \_\_\_\_\_

(NOTARIAL SEAL)

STATE OF ALABAMA

COUNTY OF BALDWIN

I, a Notary Public in and for said county in said state, hereby certify that Billie Jo Underwood, whose name as Chairman of BALDWIN COUNTY, ALABAMA, a political subdivision in the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal of office, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
James T. Birchall, Notary Public

My commission expires \_\_\_\_\_

(NOTARIAL SEAL)

**EXHIBIT A**

**THE SITE**

*[to be added]*

**EXHIBIT B**

**LEASE RENTAL**

*[to be added]*