

FEDERAL TAX AGREEMENT

THIS FEDERAL TAX AGREEMENT (the “Tax Agreement”), is executed as of March 20, 2021, by the City of Mission, Texas (the “Issuer”), for the benefit of First Security Finance, Inc. and its successors and assigns (the “Lender”), and any firm of attorneys rendering an opinion on the exclusion from gross income for federal income tax purposes of the interest portion of rental payments payable under the Lease Agreement.

RECITALS

1. This Tax Agreement is being executed and delivered in connection with that certain Public Property Finance Act Lease Purchase Agreement dated as of March 20, 2021 (the “Lease Agreement”), entered into by and between the Issuer, as lessee, and Performance Services, Inc., as lessor (the “Lessor”).

2. The Internal Revenue Code of 1986, as amended, and the applicable Regulations (as defined herein), impose certain limitations on the uses and investment of the Lease Proceeds (as defined herein) and of certain other money relating to the Lease Agreement, and set forth the conditions under which the interest portion of rental payments payable under the Lease Agreement will be excluded from gross income for federal income tax purposes.

3. The Issuer is executing this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of the Lease Proceeds and the property financed or refinanced with those proceeds and the investment of the Lease Proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest portion of rental payments payable under the Lease Agreement from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Issuer represents, covenants and agrees as follows:

Section 1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Lease Agreement, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

“**Annual Compliance Checklist**” means a checklist for the Lease Agreement designed to measure compliance with the requirements of this Tax Agreement after the Closing Date substantially in the form attached as **Exhibit D**.

“**Benefitted Facilities**” or “**Benefitted Facility**” means, as the context requires, all or any of the Issuer’s buildings and facilities benefitted from the energy conservation improvements, comprising the Financed Assets as further described on **Exhibit C** to this Tax Agreement. The Benefitted Facilities are expected to include the buildings and facilities set on **Exhibit C** to this Tax Agreement.

“Closing Date” means March 20, 2021.

“Code” means the Internal Revenue Code of 1986, as amended.

“Compliance Officer” means the City Manager or its designee.

“Financed Assets” and **“Financed Asset”** means, as the context requires, all or any portion of the Project financed with proceeds of the Lease Agreement, as described on **Exhibit C** hereto.

“Investment” means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Lease Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

“IRS” means the Internal Revenue Service.

“Lease Agreement” means the Public Property Finance Act Lease Purchase Agreement dated as of March 20, 2021, between the Issuer, as lessee, and the Lessor, as lessor, as amended from time to time.

“Lease Proceeds” means the gross proceeds of the Lease Agreement, which include (a) sale proceeds (any amounts actually or constructively received by the Issuer from the execution and delivery of the Lease Agreement, including amounts used to pay a discount or fees to the Lessor, but excluding pre-issuance accrued interest), (b) any amounts received from investing sale proceeds or transferred proceeds or other investment proceeds, (c) any amounts held in a sinking fund for the Lease Agreement, (d) any amounts held in a pledged fund or reserve fund for the Lease Agreement, (e) any other replacement proceeds, and (f) any transferred proceeds.

“Management Agreement” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of a Financed Asset or a Benefitted Facility, such as a contract to manage all or any portion of the Financed Assets or the Benefitted Facilities. However, contracts for services that are solely incidental to the primary governmental function of a Financed Asset or a Benefitted Facility (for example, contracts for janitorial, office equipment repair, billing or similar services); however, are not treated as Management Agreements.

“Measurement Period” means the period beginning on the later of (i) the Closing Date or (ii) the date the property is placed in service and ending on the earlier of (A) the final maturity date of the Lease Agreement or (B) the expected economic useful life of the property.

“Non-Qualified Use” generally means any use of a Financed Asset or a Benefitted Facility in a trade or business carried on by any Non-Qualified User that is different in form or substance to the use made of a Financed Asset or a Benefitted Facility by any other member of the general public. Generally, ownership, a lease agreement or any other use that provides a Non-Qualified User a special legal right or entitlement to use a Financed Asset or a Benefitted Facility will constitute Non-Qualified Use.

“Non-Qualified User” means any person or entity other than the Issuer.

“Opinion of Special Tax Counsel” means the written opinion of Special Tax Counsel addressed to the Lender to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest portion of rental payments under the Lease Agreement from gross income for

federal income tax purposes or an opinion describing additions, modifications or additional procedures required to preserve the interest portion of rental payments under the Lease Agreement from gross income for federal income tax purposes.

“Post-Issuance Tax Requirements” means those requirements related to the use of Lease Proceeds, the use of the Financed Assets and Benefitted Facilities, and the investment of Lease Proceeds after the Closing Date.

“Project” means all of the property acquired, installed, constructed, and equipped by the Issuer using Lease Proceeds and other money contributed by the Issuer, as described on **Exhibit C**.

“Qualified Use Agreement” means any of the following:

(1) A lease or other short-term use by members of the general public who use the Project on a short-term basis in the ordinary course of Lessee’s governmental purposes.

(2) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of the Project under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Project under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) the Project was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Project under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Project for a period up to 50 days in length pursuant to a negotiated arm’s-length arrangement at fair market value so long as the Project was not constructed for a principal purpose of providing the property for use by that person.

“Regulations” means United States Treasury Regulations governing obligations the interest on which is excluded from gross income for federal income tax purposes under Code §§ 103 and 141-150.

“Special Tax Counsel” means Gilmore & Bell, P.C., Kansas City, Missouri, or other nationally recognized firm of bond counsel acceptable to the Lender.

“State” means the State of Texas.

“Tax Compliance File” means documents and records for the Lease Agreement maintained by the Compliance Officer pursuant to this Tax Agreement.

“Yield” means the yield on the Lease Agreement, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

Section 2. Purpose of the Lease Agreement; Reimbursement; Use of Lease Proceeds.

(a) *Purpose.* The Lease Agreement is being executed and delivered for the purpose of paying (i) costs of the Project, including payment of capitalized interest on the Lease Agreement during the installation of the Financed Assets, and (ii) if requested by the Issuer and approved by the Lender, certain costs of issuance in connection with the execution and delivery of the Lease Agreement.

(b) *Reimbursement.* Reimbursement from proceeds of the Lease Agreement of expenditures paid prior to the Closing Date will satisfy the requirements of Regulations § 1.150-2. The list of expenditures to be reimbursed, if any, are set forth on **Exhibit C**.

(c) *Use of Lease Proceeds.* On the Closing Date, all proceeds of the Lease Agreement in the amount of \$17,253,982.44 are expected to be deposited in the Acquisition Fund and used to pay (i) costs of the Financed Assets, including capitalized interest of \$497,695.44, which is sufficient to pay the interest portion of rental payments under the Lease Agreement on April 1, 2022, and (ii) if requested by the Issuer and approved by the Lender, certain costs of issuance in connection with the Lease Agreement.

Section 3. Project Completion. The Issuer has incurred, or will incur within 6 months after the Closing Date, a substantial binding obligation to a third party to spend at least 5% of the Lease Proceeds on the Financed Assets. The completion of the Financed Assets and the allocation of the Lease Proceeds to expenditures will proceed with due diligence. At least 85% of the proceeds of the Lease Agreement will be allocated to expenditures on the Financed Assets within 3 years after the Closing Date.

Section 4. Funds or Accounts. The Acquisition Fund has been established under the Escrow Agreement with the Escrow Agent. Amounts held in the Acquisition Fund will be used to pay a portion of the costs of the Project. No other funds or accounts have been established for the Lease Agreement to hold Lease Proceeds or other money that will be used to make rental payments under the Lease Agreement.

Section 5. Rebate and Yield Restriction.

(a) *Lender’s Certification of Purchase Price.* The Lender has represented in a Certificate of Lender, dated as of the Closing Date, that it has acquired the Lease Agreement, pursuant to Regulations § 1.148-1(f)(2)(i) (relating to the so-called “private placement rule”, for the amount of \$17,253,982.44 (the “**Issue Price**”), and is holding the Lease Agreement for its own account with no current intent to resell it.

(b) *Lease Agreement Yield.* Based on the Issue Price, Special Tax Counsel has determined that the Yield on the Lease Agreement is 2.7795%. The amortization schedule and calculation of the Yield on the Lease Agreement is attached to this Tax Agreement as **Exhibit A**. The Issuer has not entered into an interest rate swap agreement with respect to any portion of Lease Proceeds.

(c) *Lease Agreement Subject to the Rebate Requirement.* The Lease Agreement is subject to the arbitrage rebate requirements of Code § 148(f). Pursuant to the Escrow Agreement, investment of the Lease Agreement Proceeds is limited to placement in an interest-bearing demand deposit account. If the Yield on investments of the Acquisition Fund exceeds 2.7795%, or if the Issuer establishes any sinking or

reserve fund for the Lease Agreement, then the Issuer will contact Special Tax Counsel to seek advice regarding the need to calculate and pay arbitrage rebate.

Section 6. Use of Financed Assets and Benefitted Facilities.

(a) *General.* The Project will be owned by Lessee throughout the Measurement Period. Except as otherwise described in this **Section 6**, no portion of the buildings and facilities comprising the Project is expected to be used in a Non-Qualified Use during the Measurement Period. Unless Lessee obtains an Opinion of Special Tax Counsel, Lessee will not use, or permit the use of, the buildings and facilities comprising the Project in any other Non-Qualified Use.

(b) *Agreements.* As of the Closing Date, Lessee does not have any agreements with Non-Qualified Users that relate to the management or operation of any portion of the buildings and facilities comprising the Project. During the Measurement Period, Lessee will not enter into or renew any agreement with any Non-Qualified User with respect to the management or operation of any portion of the buildings and facilities comprising the Project without first obtaining an Opinion of Special Tax Counsel.

(c) *Leases.* Other than the Lease Agreement, as of the Closing Date, Lessee does not have any leases with Non-Qualified Users with respect to the buildings and facilities comprising the Project. During the Measurement Period, Lessee will not enter into or renew any other leases with any Non-Qualified Users, other than Qualified Use Agreements, with respect to the buildings and facilities comprising the Project without first obtaining an Opinion of Special Tax Counsel.

(d) *Written Policies and Procedures of the Issuer.* The Issuer intends for this Tax Agreement to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Lease Agreement and to supplement any other formal policies and procedures related to the Post-Issuance Tax Requirements that the Issuer has established.

(e) *Compliance Officer.* The Issuer, when necessary to fulfill the Post-Issuance Tax Requirements, will, through the Compliance Officer, sign Form 8038-T in connection with the payment of arbitrage rebate or Yield reduction payments, participate in any federal income tax audit of the Lease Agreement or related proceedings under a voluntary compliance agreement procedures (VCAP) or undertake a remedial action procedure pursuant to Regulations § 1.141-12.

(f) *Annual Compliance Checklist.* Attached as **Exhibit D** is a form of Annual Compliance Checklist for the Lease Agreement. The Compliance Officer will prepare and complete an Annual Compliance Checklist for the Financed Assets and Benefitted Facilities at least annually. In the event the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Compliance Officer will obtain an Opinion of Special Tax Counsel and take actions to correct any deficiency.

Section 7. Recordkeeping. The Compliance Officer will maintain the Tax Compliance File for the Lease Agreement in accordance with this Tax Agreement. Unless otherwise specifically instructed in a written Opinion of Special Tax Counsel or to the extent otherwise provided in this Tax Agreement, the Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (i) the Lease Agreement or (ii) any obligation issued to refund the Lease Agreement. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the

electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the Issuer, and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Issuer's premises.

Section 8. Miscellaneous

(a) *Form 8038-G.* A copy of the completed and fully executed IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) is attached to this Tax Agreement as **Exhibit B**. The Form 8038-G was prepared by Special Tax Counsel based on representations and covenants by the Issuer contained in this Tax Agreement or otherwise made by the Issuer. The information contained on Form 8038-G is true, complete and correct to the knowledge of the undersigned, and the undersigned is authorized to sign the Form 8038-G on behalf of the Issuer and deliver it to Special Tax Counsel for filing with the IRS.

(b) *Single Issue.* No other debt obligations of the Issuer: (1) are being sold within 15 days of the execution and delivery of the Lease Agreement, (2) are being sold under the same plan of financing as the Lease Agreement, and (3) are expected to be paid from substantially the same source of funds as the Lease Agreement (disregarding guarantees from unrelated parties, such as bond insurance).

(c) *Bank Qualified Tax-Exempt Obligation.* The Issuer has not designated the Lease Agreement as a "qualified tax-exempt obligation" under Code § 265(b)(3).

(d) *No Federal Guaranty.* The payment of rental payments under the Lease Agreement are not, and the Issuer will not permit the payment of rental payments under the Lease Agreement to be, directly or indirectly guaranteed by the United States of America or any agency thereof.

(e) *Hedge Bonds.* The Issuer reasonably expects that at least 85% of the net sale proceeds (the sale proceeds of the Lease Agreement less any sale proceeds invested in a reserve fund) of the Lease Agreement will be used to carry out the governmental purpose of the Lease Agreement within 3 years after the Closing Date, and not more than 50% of the proceeds of the Lease Agreement will be invested in Investments having a substantially guaranteed Yield for 4 years or more.

(f) *Registration Requirement; Record Owner.* The Issuer will maintain or cause to be maintained a record of the owner(s) of the Lease Agreement and the person/entity entitled to the receipt of the interest portions of rental payments under the Lease Agreement. Transfer of ownership of the Lease Agreement is effective only if entered in these records.

(g) *Reliance.* The Issuer understands that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Lease Agreement and the exclusion from federal gross income of the interest portion of payments payable by the Issuer under the Lease Agreement.

(h) *Enforceability.* If any provision in this Tax Agreement or in the Lease Agreement is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

(i) *Electronic Transactions.* The transaction described in this Tax Agreement may be conducted, and related documents may be stored, by electronic means.

IN WITNESS WHEREOF, the undersigned, by execution of this Tax Agreement, hereby makes the foregoing certifications, representations, and agreements contained in this Tax Agreement on behalf of the Issuer.

CITY OF MISSION, TEXAS

By: _____
Title: _____

EXHIBIT A

**AMORTIZATION SCHEDULE AND
CALCULATION OF YIELD ON THE LEASE AGREEMENT**

Payment Date	Amort.	Interest Rate	Payments		
	Pmt. No.		Interest	Principal	Total
3/20/2021					
3/20/2021	-				
4/1/2022	-	2.799%	497,695.44	-	497,695.44
4/1/2023	1	2.799%	482,938.97	941,437.16	1,424,376.13
4/1/2024	2	2.799%	456,588.14	967,787.99	1,424,376.13
4/1/2025	3	2.799%	429,499.76	994,876.37	1,424,376.13
4/1/2026	4	2.799%	401,653.17	1,022,722.96	1,424,376.13
4/1/2027	5	2.799%	373,027.15	1,051,348.98	1,424,376.13
4/1/2028	6	2.799%	343,599.89	1,080,776.24	1,424,376.13
4/1/2029	7	2.799%	313,348.97	1,111,027.16	1,424,376.13
4/1/2030	8	2.799%	282,251.32	1,142,124.81	1,424,376.13
4/1/2031	9	2.799%	250,283.24	1,174,092.89	1,424,376.13
4/1/2032	10	2.799%	217,420.38	1,206,955.75	1,424,376.13
4/1/2033	11	2.799%	183,637.69	1,240,738.44	1,424,376.13
4/1/2034	12	2.799%	148,909.42	1,275,466.71	1,424,376.13
4/1/2035	13	2.799%	113,209.11	1,311,167.02	1,424,376.13
4/1/2036	14	2.799%	76,509.54	1,347,866.59	1,424,376.13
4/1/2037	15	2.799%	38,782.76	1,385,593.37	1,424,376.13
Total			4,609,354.95	17,253,982.44	21,863,337.39

Proof of Arbitrage Yield

	Days		Pres. Val.	Present
Payment	After	Lease	Factor	Value to
Date	Closing	Payments	2.77954%	3/20/2021
3/20/2021				
3/20/2021	-	-	1.0000000	-
4/1/2022	371	497,695.44	0.9719534	483,736.75
4/1/2023	731	1,424,376.13	0.9454905	1,346,734.05
4/1/2024	1,091	1,424,376.13	0.9197481	1,310,067.20
4/1/2025	1,451	1,424,376.13	0.8947065	1,274,398.65
4/1/2026	1,811	1,424,376.13	0.8703468	1,239,701.24
4/1/2027	2,171	1,424,376.13	0.8466503	1,205,948.51
4/1/2028	2,531	1,424,376.13	0.8235990	1,173,114.76
4/1/2029	2,891	1,424,376.13	0.8011753	1,141,174.95
4/1/2030	3,251	1,424,376.13	0.7793621	1,110,104.75
4/1/2031	3,611	1,424,376.13	0.7581428	1,079,880.48
4/1/2032	3,971	1,424,376.13	0.7375012	1,050,479.11
4/1/2033	4,331	1,424,376.13	0.7174216	1,021,878.25
4/1/2034	4,691	1,424,376.13	0.6978888	994,056.08
4/1/2035	5,051	1,424,376.13	0.6788877	966,991.41
4/1/2036	5,411	1,424,376.13	0.6604039	940,663.62
4/1/2037	5,771	1,424,376.13	0.6424235	915,052.64
Total		21,863,337.39		17,253,982.44
Yield Target Amount:				
Principal			17,253,982.44	
Original issue premium/discount			-	
Sale proceeds			17,253,982.44	
Accrued interest			-	
Total				17,253,982.44
Difference				0.00
Lease yield				2.7795384%

EXHIBIT B

IRS FORM 8038-G

[Post-closing item to be prepared by Special Tax Counsel.]

EXHIBIT C

DESCRIPTION OF PERSONAL PROPERTY EXPECTED TO COMPRISE FINANCED ASSETS AND BENEFITTED FACILITIES; ANALYSIS OF NON-QUALIFIED USE

The Project includes the energy savings improvements, as set forth in the Installation Contract dated as of _____, 2021, between the Issuer and Performance Services, Inc., as described therein.

The estimated average economic life of the Financed Assets is not less than 20 years, and the Issuer expects the Financed Assets to be placed in service in 2022.

The overall financing sources of the Project are expected to be as follows:

Sources	Cost
Lease Proceeds	\$17,253,982.44
Costs of Issuance	0.00
Payment of Rental Payments (capitalized interest)	(497,695.44)
Total Financing Sources for costs of the Project	<u>\$16,756,287.00</u>

EXHIBIT D

SAMPLE ANNUAL COMPLIANCE CHECKLIST

<p>Name of tax-exempt obligation (“Lease Agreement”) financing the Financed Assets:</p> <p>Placed in service date of Financed Assets:</p> <p>Benefitted Facilities:</p> <p>Name of Compliance Officer:</p> <p>Period covered by request (“Annual Period”):</p>	<p>This Annual Compliance Checklist is designed to cover that certain Public Property Finance Act Lease Purchase Agreement (the “Lease Agreement”) dated as of March 20, 2021, entered into by and between the City of Mission, Texas, as lessee, and Performance Services, Inc., as lessor</p> <hr/> <hr/> <hr/> <hr/>	
Item	Question	Response
1 Ownership	For federal income tax purposes, were all of the Financed Assets and Benefitted Facilities owned by the Issuer for federal tax purposes during the entire Annual Period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If answer above was “No,” was an Opinion of Special Tax Counsel obtained prior to the transfer? If Yes, include a copy of the Opinion in the Tax Compliance File. If No, contact Special Tax Counsel and include description of resolution in the Tax Compliance File.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2 Use of the Financed Assets and the Benefitted Facilities	During the Annual Period, was any Financed Asset or Benefitted Facility used by a Non-Qualified User pursuant to a lease agreement, management or service agreement or any other agreement granting the Non-Qualified User special legal rights to use any Financed Asset or Benefitted Facility?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If answer above was “Yes,” was an Opinion of Special Tax Counsel obtained prior to entering into the arrangement? If Yes, include a copy of the Opinion in the Tax Compliance File. If No, contact Special Tax Counsel and include description of resolution in the Tax Compliance File.	<input type="checkbox"/> Yes <input type="checkbox"/> No

3 Arbitrage & Rebate	<p>1. Were the proceeds of the Lease Agreement spent in accordance with the following schedule? (a) at least 15% within 6 months from the Closing Date; (b) at least 60% within 12 months from the Closing Date; and (c) 100% within 18 months from the Closing Date.</p> <p>2. Has the Issuer established a fund or account to make rental payments under the Lease Agreement or has the Issuer established a segregated portion of investments in an account to make rental payments under the Lease Agreement?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If the answer to question 1 above is “No,” or the answer to question 2 above was “Yes,” contact Special Tax Counsel to determine if an arbitrage rebate or yield restriction calculation must be completed.</p> <p>Include a description of Special Tax Counsel’s advice in the Tax Compliance File. If an arbitrage rebate or yield restriction calculation is prepared, include a copy of the report in the Tax Compliance File.</p>	

By: _____
Compliance Officer

Date Completed: _____