

**MEMORANDUM OF AGREEMENT FOR
DELEGATED AUTHORITY BETWEEN THE
TEXAS FACILITIES COMMISSION
AND THE
TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

This Memorandum of Agreement ("MOA") is made and entered into by and between the **Texas Facilities Commission** ("TFC") and the **Health and Human Services Commission** ("HHSC"), both acting on behalf of the State of Texas by and through its duly authorized officials.

WHEREAS, TFC is the state agency with primary responsibility for leasing facilities for state agencies including HHSC; and

WHEREAS, HHSC has requested that TFC delegate specific authority to HHSC to lease certain facilities on behalf of HHSC or any Health and Human Service agency over which it has oversight; and

WHEREAS, TFC agrees to delegate specific authority to HHSC to lease certain facilities on the specified terms and conditions as set out herein; and

WHEREAS, Title 1, Part 5, Subchapter A, Section 115.4, Texas Administrative Code, states:

A request by an agency for delegated leasing authority must have the approval of the governing body of the agency making the request. Any agency under the authority of an individual Commissioner or Executive Director, appointed by or directly accountable to the Governor, must provide evidence of notification to the Office of the Governor in order for such a request to be considered valid;

and

WHEREAS, the parties intend for this MOA to satisfy the requirements of Title 1, Part 5, Subchapter A, Section 115.4, Texas Administrative Code, without reoccurring action by HHSC;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, TFC and HHSC hereby agree as follows:

1. Delegation of Authority. TFC delegates leasing authority to HHSC for:

- a. space needs during states of emergency as declared by the Office of the Governor; or
- b. space provided by another governmental entity or children's advocacy center at no-cost or nominal cost as determined by HHSC with notice to TFC. Nominal cost may include lease costs and payment for services such as telecommunications, security alarm, utilities, or parking. Although there are no anticipated costs associated with this MOA, should any costs be incurred, such costs will be the sole and full responsibility of the party who incurs same.

2. Types of Space Authorized. The types of space that HHSC may lease pursuant to this delegation of authority are:

- a. client services offices;
- b. administrative offices and related storage;
- c. warehouse;
- d. laboratory;
- e. vehicle parking areas;
- f. boat storage;
- g. aircraft storage; or
- h. any combination of the above.

3. Delegated Lease Requirements. For each delegated lease, HHSC is required to:

- a. define the gross square feet of leased space;
- b. define all costs for the leased space;
- c. perform best value analysis of proposed lease costs including confirmation that costs are lower than commercially available space in the general vicinity. A best value analysis is not required for no-cost or nominal-cost value leases.
- d. define start and end date of lease;
- e. include an early right to cancel, if possible; and
- f. provide that emergency leases shall not exceed 12 months.

4. Authorized Lessors. HHSC is delegated specific authority to lease space from certain authorized lessors as follow:

- a. state agencies per Section 2167.051(1), Texas Government Code;
- b. federal agencies per Section 2167.051(2)(a), Texas Government Code;
- c. political subdivisions per Section 2167.051(2)(b), Texas Government Code;

- d. Texas Retirement System per Section 2167.051(2)(c), Texas Government Code; and
- e. a children's advocacy center established under Subchapter E, Chapter 264, Family Code, per Section 2167.051(2)(D), Texas Government Code.

5. Administration. Upon execution of a lease for which HHSC is delegated specific authority, and subject to the limitations stated elsewhere in this delegation, HHSC is authorized to administer the lease to ensure prompt performances of all necessary actions and compliance with the terms and conditions of the lease, which shall include but not be limited to the duties enumerated below:

- a. assume day-to-day management of the lease;
- b. monitor the lessor's performance to assure compliance with requirements of the lease;
- c. negotiate and execute within the scope of the lease, modification agreements, and supplemental lease agreements;
- d. review and approve technical reports, build-out plans, and other items required for approval, if any;
- e. routinely perform physical inspection and approve the lease space;
- f. verify availability of funding prior to obligating agency monies, if applicable;
- g. assure that changes in terms and conditions under the lease are not implemented before written authorization or a modification or supplemental lease agreement is issued;
- h. timely issue written notifications of intent to exercise extensions and/or renewal options of the lease;
- i. modify or amend the lease as necessary based on conditions and provide written notification to all appropriate parties;
- j. administer all escalations as provided for in the lease and coordinate payments with the appropriate office;
- k. enforce the lease according to its terms and provisions including direct notification to the lessor or his/her designated representative of any instance of failure to deliver services, maintenance or utilities in accordance with lessor's obligations under the lease;
- l. exercise authority to take corrective action for the lessor's failure to deliver services, maintenance, or utilities including authorizing rental deductions; and
- m. issue the final decision on disputes arising between the lessor and the agency.

6. Reporting Requirements. All HHSC leases acquired pursuant to this MOA must be submitted to TFC quarterly. HHSC must certify that all information provided in the reports is current and accurate. All quarterly reports must include the following:

- a. HHSC region;
- b. lessor name, street address, city, county and zip code;
- c. emergency or non-emergency status;
- d. HHSC divisions located at or using the lease space;
- e. gross square footage;
- f. number of FTEs located at or using lease space;
- g. type of lease agreement including: (1) Inter-Governmental Contract/Inter-Agency Contract; (2) Memorandum of Understanding/Agreement; or (3) Letter of Agreement or other form of agreement;
- h. annual costs, if any, including: (1) rent; (2) custodial; (3) utilities; and (4) miscellaneous if fixed and reoccurring; and
- i. term including: (1) start date; (2) end date.

TFC reserves the right to audit HHSC leases reported pursuant to this MOA upon reasonable notice to HHSC.

7. Limitations. This delegation does not authorize HHSC to take any other actions, including but not limited to the following:

- a. change the general terms and conditions of the lease, which are outside the scope of the this MOA; or
- b. re-delegate or otherwise assign or transfer the authority granted herein.

8. Entire Agreement. This MOA contains the entire understanding of TFC and HHSC. This MOA supersedes all previous discussions, proposals, or agreements between TFC and HHSC with respect to the subject matter of this MOA. This MOA may be amended only by mutual written agreement executed by both parties.

9. Termination. TFC may revoke delegated leasing authority upon notice to HHSC. Otherwise, this MOA shall continue in full force and effect unless terminated by operation of law or by written agreement signed by authorized representatives of both parties.

10. Notice. Any notices required or that may be given pursuant to this MOA shall be given to:

HHSC:

Chris Adams
4900 N. Lamar Blvd.
Austin, TX 78751
512-424-6851
chris.adams@hhsc.state.tx.us

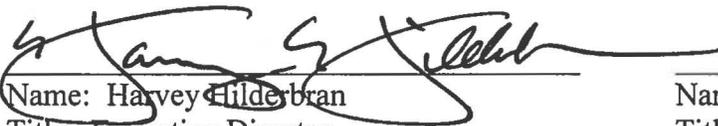
Texas Facilities Commission:

Peter Maass
1711 San Jacinto Blvd.
Austin, TX 78701
512-463-9454 Direct
512-394-2197 Cell
peter.maass@tfc.state.tx.us

THIS MOA is effective on the date last signed below.

TEXAS FACILITIES COMMISSION

**HEALTH AND HUMAN SERVICES
COMMISSION**


Name: Harvey Hildebran
Title: Executive Director


Name: Chris Adams
Title: Deputy Executive Commissioner for
System Support Services

Date of Execution: 3-23-17

Date of Execution: 3/28/17

 G.C.
 D.E.D.