

**LEASE AGREEMENT
BETWEEN
STEPHEN F. AUSTIN STATE UNIVERSITY, (“Lessee”)
AND
ANGELINA COLLEGE (“Lessor”)**

WITNESSETH

WHEREAS, Lessee desires to occupy office and instructional space in order to support their educational mission; and

WHEREAS, to accommodate this mission, Lessee desires to occupy space at the Angelina College Polk County College/Commerce Center located at 1015 N. Hwy 59 Loop, Livingston, TX 77351; and

WHEREAS, Lessor is willing to lease to Lessee space at the Angelina College Polk County College/Commerce Center located at 1015 N. Hwy 59 Loop, Livingston, TX 77351 on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, and intending to be legally bound, the parties hereto agree as follows:

1 LEASED PREMISES

- 1.1 Lessor hereby leases to Lessee and Lessee hereby accepts from Lessor space at 1015 US Hwy 59 North Loop, Livingston, TX 77351 (the “Building”) as described in Exhibit A (the “Premises” or “Leased Premises”), attached hereto and included herein. The Leased Premises shall be provided with the services, equipment and furniture as designated in Exhibit B attached hereto and included herein. Lessee understands and agrees that Lessor makes no representations or warranties with regard to the condition of the Leased Premises or the Building, and Lessee agrees to accept the same in “as is” condition.
- 1.2 **Access.** During the term of this Agreement and as specified herein, Lessee and their employees, agents, and invitees shall have full and unimpaired access to the Leased Premises during the Hours of Operation (as defined below) and at such other times as agreed upon by the parties, in writing.
- 1.3 **Hours of Operation.** Lessor shall provide ordinary and reasonable amounts of utilities, including electricity, heat, air conditioning, water and sewage for the Building during the Hours of Operation. It is understood that the Hours of Operation shall initially be 8:00 a.m. to 10:00 p.m., Monday through Thursday and 8:00 a.m. to 5:00 p.m., Friday. The foregoing times may be reviewed by the parties, and changes to such Hours of Operation may be made by mutual written agreement of Lessee and Lessor.
- 1.4 **Alteration of Leased Premises.** Lessee shall make no alteration to the Leased Premises without the prior written approval of Lessor, which shall not be unreasonably withheld, conditioned or delayed. Upon expiration or early termination of this Agreement, Lessee shall promptly (and, in no event, later than the effective date of such expiration or early termination) remove any equipment, and shall restore the Leased Premises to the same condition as found at the time of the original installation thereof, reasonable wear and tear excepted. Lessee shall leave the Leased Premises in a clean, orderly state reasonably satisfactory to Lessor.

2 TERM

- 2.1 The Effective Date of this Agreement shall be the date of last signature by either party.
- 2.2 The initial term of this Agreement shall expire May 31, 2022, unless terminated earlier pursuant to this Agreement.
- 2.3 This Agreement shall automatically renew on an annual basis for an additional one year term unless terminated by either party pursuant to this Agreement.

3 LESSEE OBLIGATIONS

- 3.1 Lessee shall designate a Representative to act as a liaison and decision-maker in all discussions with Lessor concerning this Agreement.
- 3.2 Lessee agrees to take all necessary measures to prevent its employees, contractors, agents or invitees causing injury and loss to persons or property located on the Leased Premises.
- 3.3 Lessee shall be responsible for all damages to persons or property caused by Lessee or any of its agents or employees. Lessee shall promptly repair to the specifications of the Lessor any damage to the Leased Premises or Lessor's equipment caused by their agents or employees; and on Lessee's failure to do so within thirty (30) days of receiving written notice from the Lessor of such damage, the Lessor may repair such damage and Lessee shall promptly reimburse the Lessor for the cost of the repair.
- 3.4 Lessee agrees that in the event of an accident of any kind at the Leased Premises of which Lessee are aware, Lessee will immediately notify the Lessor.

4 LESSOR OBLIGATIONS

- 4.1 Lessor shall designate a Representative to act as a liaison and decision-maker in all discussions with Lessee concerning this Agreement.
- 4.2 Lessor covenants and agrees that it will, without demand:
 - 4.2.1 Keep the Leased Premises in a reasonably clean and orderly condition.
- 4.3 Notwithstanding the foregoing, in no event shall Lessor be obligated under this Provision to repair any damage caused by any act, omission, or negligence of Lessee or its officers, agents, contractors, invitees, or employees. Lessor shall be responsible for all damages to persons or damages to or loss of property caused by the negligence of Lessor or any of its agents, students, or employees.

5 RENT

- 5.1 Lessee shall pay an annual rent of one dollar (\$1). Payment will be made as mutually agreed upon by Lessee and Lessor.

5.2 **Loss of Funding.** Performance by the Lessor and Lessee under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by Lessor's Board of Trustees and Lessee's Board of Regents (the "Board"). If the Legislature fails to appropriate or allot the necessary funds or the Boards fail to allocate the necessary funds, then Lessor or Lessee will issue written notice to the other party and either party may terminate this Agreement without further duty or obligation hereunder. Both parties acknowledges that appropriation, allotment, and allocation of funds are beyond the control of the parties.

6 PERMITTED USE

The Leased Premises shall be used by Lessee for instruction programs, support of those programs, general office use, or for related uses and for no other purpose. The specific instruction programs will be agreed upon by Lessee and Lessor.

7 PERMITTED EQUIPMENT

Lessee shall provide their own furniture and/or equipment unless mutually agreeable with Lessor. Lessee shall have the right to install, operate and maintain equipment as needed with the written consent of Lessor, which shall not be unreasonably conditioned, withheld or delayed. All equipment installed by Lessee at the Leased Premises shall not be deemed realty and shall remain at all times Lessee's personal property.

8 INSURANCE.

8.1 Lessor represents that it has procured comprehensive Property Insurance coverage in protecting the Leased Premises, excluding Lessee's personal property. Lessee shall carry and maintain, at their expense and with satisfactory insurance companies, insurance in the minimum limits as set forth below:

- 8.1.1 Commercial General Liability
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$1,000,000 Products & Completed Operations Aggregate
 - \$1,000,000 Personal & Advertising Injury
 - \$ 100,000 Fire Damage (any one fire)
 - \$ 5,000 Medical Expense (any one person)

Lessee as an agency of the State of Texas is insured for Commercial General Liability insurance under a program permitting the purchase of such liability insurance covering the required limits of liability. The parties acknowledge that permission by Lessee to maintain that policy may be revoked without any fault of Lessee. If Lessee during the term no longer maintains a policy for Commercial General Liability insurance, Lessee will self-insure for the above amounts, and shall provide proof of financial assurance and/or a Certificate of Self-Insurance coverage to illustrate the self-funded retention levels maintained for the general liability program. The parties agree that such self-insurance by Lessee shall, without further requirement, satisfy all general liability insurance obligations of this Agreement.

- 8.1.2 Automobile Liability

Insurance covering owned, hired, and non-owned vehicles, with a combined single limit for bodily injury (including death) and property damage of \$1,000,000; property damage is \$100,000 per occurrence, and bodily injury (including death) is \$250,000 per person and \$500,000 per occurrence.

8.1.3 **Workers' Compensation**

Lessee, as an agency of the State of Texas, will self-insure with respect to workers' compensation coverage as a member of the Government Employees Workers' Compensation Insurance Program. Lessee will provide a statement from the State Office of Risk Management confirming this coverage.

8.2 Lessor shall be named as an Additional Insured on a Primary and Non-Contributory basis for all policies, except workers' compensation, to the full extent allowable by law. Reference to the Additional Insured endorsement to the policy shall be specified in the Certificate of Insurance and a copy attached to the Certificate of Insurance.

9 TERMINATION

This Agreement may be terminated under the following conditions:

9.1 Termination by Lessee.

9.1.1 **Event of Default.** Lessee may immediately terminate this Agreement by notice to Lessor upon the occurrence of an Event of Default by Lessor. An Event of Default as to Lessor shall mean the occurrence or existence of one or more of the following events or conditions (for any reason, whether voluntary, involuntary, or effected or required by law):

9.1.1.1 Lessor breaches any provision of this Agreement and such breach remains uncured thirty (30) days following written notice of such breach by Lessee to Lessor.

9.1.1.2 Lessor becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute.

9.1.1.3 Lessor becomes insolvent or subject to direct control by a trustee, receiver, or similar authority.

9.1.1.4 Lessor has liquidated, voluntarily or otherwise.

9.2 Termination by Lessor.

9.2.1 **Event of Default.** Lessor may immediately terminate this Agreement by notice to Lessee upon the occurrence of an Event of Default by Lessee. An Event of Default as to Lessee shall mean the occurrence or existence of one or more of the following events or conditions (for any reason, whether voluntary, involuntary, or effected or required by law):

9.2.1.1 Lessee fails to pay any amount due hereunder and such failure shall have continued for a period of thirty (30) days after written notice of such to Lessee by Lessor, unless such failure to pay was based on an Event of Default by Lessor.

9.2.1.2 Lessee breaches any provision of this Agreement and such breach remain uncured thirty (30) days following written notice of such breach by Lessor to Lessee.

9.2.1.3 Lessee becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute.

9.2.1.4 Lessee becomes insolvent or subject to direct control by a trustee, receiver, or similar authority.

9.2.1.5 Lessee has liquidated, voluntarily or otherwise.

9.3 Termination Due to Destruction.

If the Premises, during the term of this Agreement or prior to commencement date, are damaged by casualty and can be restored within one hundred twenty (120) days, Lessor will, at its expense, restore the Leased Premises to substantially the same condition that existed before the casualty and Lessee will, at its expense, replace any of their damaged furniture, fixtures, and personal property and restore any leasehold improvements and Lessee Equipment. During such time as the Leased Premises are being restored, Lessor shall provide like or comparable space so that Lessee can continue its operations under this Agreement. In the event Lessor cannot complete the portion of the restoration for which Lessor is responsible within one hundred twenty (120) days, Lessor will notify Lessee in writing of the estimate time to restore and give Lessee an option to terminate this Agreement by notifying Lessor in writing within twenty (20) days from receipt of Lessor's estimate. If Lessee does not notify Lessor timely of Lessee's election to terminate, this Lease Agreement will continue and Lessor will restore the Premises as provided herein.

9.4 Termination Without Cause

Either party may terminate this Agreement by giving written notice to the other party at least 60 days before the end of the initial period of the contract or at least 90 days at any point after the end of the initial period.

10 **INDEMNIFICATION.**

10.1 To the extent allowed by the laws and Constitution of the State of Texas, Lessee shall indemnify, defend and hold harmless Lessor, its trustees, officers, employees, students, and agents, from and against any and all claims, liabilities, damages, injuries, expenses or losses including, but not limited to, attorneys' fees or costs (a "Loss") by reason of any suit, claim, demand, judgment or cause of action (an "Action") initiated by any person resulting from any act or omission of Lessee, its directors, officers, employees, agents, contractors, or invitees arising out of or in connection with (i) any breach or failure of observance or performance of any representation, warranty, or covenant or other provision of this Agreement, (ii) the use of the Leased Premises, or (iii) any violation of law.

10.2 To the extent allowed by the laws and Constitution of the State of Texas, Lessor shall indemnify, defend and hold harmless Lessee, its trustees, officers, employees, students, and agents, from and against any and all claims, liabilities, damages, injuries, expenses or losses including, but not limited to attorneys' fees or costs (a "Loss") by reason of any suit, claim, demand, judgment or cause of action (an "Action") initiated by any person resulting from any act or omission of Lessor, its trustees, officers, employees, agents, contractors, invitees or Lessee arising out of or in connection with (i) any breach or failure of observance

or performance of any representation, warranty or covenant or other provision of this Agreement or (ii) any violation of law.

11 GENERAL TERMS AND CONDITIONS

- 11.1 **Relationship of Parties.** Nothing contained in this Agreement shall be deemed to be construed by the parties or by any third person to create, the relationship of employer and employee, principal and agent, of partnership, of joint venture, or of any association between Lessee and Lessor except as specifically provided hereunder.
- 11.2 **Force Majeure.** Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent.
- 11.3 **Laws.** The parties agree to observe and abide by all applicable Federal, State and Local laws, ordinances and regulations.
- 11.4 **Survival.** Termination under Paragraph 9 shall not relieve either party or any of its employees from liability for violations of this Agreement or any other act or omission of the parties.
- 11.5 **Assignment and Subletting.** This Agreement may not be assigned or transferred in whole or in part by either party without the prior written consent of the other party.
- 11.6 **Notices.** Any notice required to be given by this Agreement may be given by personal delivery, electronic facsimile or teletype, or certified or registered mail directed to the addresses provided below:

To Lessee:

Vice President for Finance and Administration
P.O. Box 6108, SFA Station
Nacogdoches, Texas 75962-6108
FAX: (936) 468-4078

To Lessor:

President's Office
PO Box 1768
Lufkin, TX 75902

- 11.7 **Amendments to the Agreement.** This Agreement shall not be changed, modified, altered or amended in any respect without the mutual consent of the parties hereto, which consent shall be evidenced by a written amendment to the Agreement executed by both parties.
- 11.8 **Waiver or Modification.** A waiver or modification of any of the provisions of this Agreement will not be affected unless in writing and signed by authorized representatives of both parties. A waiver or modification of any provision of this Agreement will not be construed as a waiver or modification of any other provision.

- 11.9 **Severability of the Agreement.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or unenforceable provisions had never been contained.
- 11.10 **Sole Agreement.** This document, its appendices, all specifications and terms and conditions and any documents incorporated by reference constitute the sole agreement of the parties on the subject matter hereof and supersede any prior understanding or communications, written or oral. In the event that any other documents incorporated by reference are in conflict with the terms of this agreement, the terms of this Licensing Agreement will control.
- 11.11 **Successors and Assigns.** This Agreement is binding on the parties and their respective successors and assigns in interest.
- 11.12 **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF BOTH PARTIES (STATE AGENCIES) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON PARTYS' PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON THE PARTIES EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 11.13 **Dispute Resolution; Governing Law.** This Agreement and any disputes under this Agreement shall be brought in a court of competent jurisdiction in Angelina or Nacogdoches County, Texas and governed by Texas law. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by Lessee and Lessor to attempt to resolve any claim for breach of contract made by either party, to the extent it is applicable to the agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by Lessee or Lessor of the right to seek redress in a court of law and neither party waives any available defenses, including, but not limited to sovereign immunity.
- 11.14 **Headings.** The captions of paragraphs and subparagraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 11.15 **Confidentiality.** During the course of the work and/or services to be provided under this Agreement and for a period of five (5) years thereafter, a party may come in contact with confidential information of the other party. The receiving party agrees to treat as confidential the information or knowledge that becomes known to it during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by the disclosing party. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. The receiving party shall promptly notify the disclosing party of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to the disclosing party all confidential information in receiving party's possession or control.

- 11.16 **Access to Public Information.** The parties are required to make any information created or exchanged pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge. Lessor acknowledges that Lessee may be required to post a copy of the fully executed Agreement on its internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.
- 11.17 **Quiet Enjoyment and Assurance of Title.** Lessor warrants and represents that it has good and sufficient title to the Leased Premises, and has full power and authority to execute this Agreement and to place Lessee in possession of the Premises in full satisfaction of and compliance with the terms and conditions herein.
- 11.18 **Exhibits.** The exhibits or other similar documents are hereby incorporated by reference (collectively, the "Attachment"). In the event of any inconsistency between the Attachment and this Agreement, this Agreement will prevail.

LESSEE

Stephen F. Austin State University

Signature

Name

Title

Date

LESSOR

Angelina College

Signature

Name

Title

Date

Exhibit A
Description of Leased Premises

Angelina College Polk County College / Commerce Center facility located at 1015 N. Hwy 59 Loop, Livingston, Texas, as indicated on the attached aerial map layout.

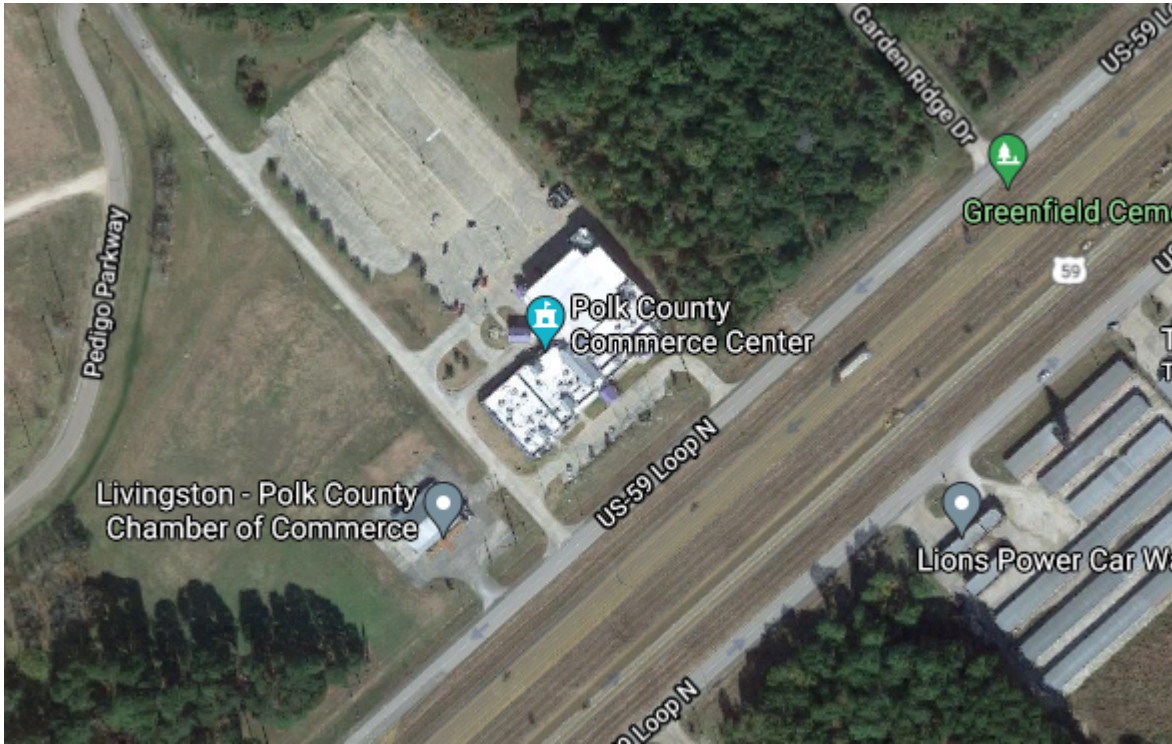


Exhibit B

Description of Services, Equipment and Furniture provided by Lessor

Basic utility services. (Electricity services, Telephone service, Internet service).

Shared equipment and/or furniture as mutually agreed upon by Lessor and Lessee.