

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

748



FROM: Economic Development Agency

SUBMITTAL DATE:
August 6, 2015

SUBJECT: Adoption of Resolution No. 2015-181 for Assurances of and Application for Funding under Senate Bill 863, Adult Local Criminal Justice Facilities Construction Program for the Larry D. Smith Correctional Facility Rehabilitation Project, District 5, [\$90,000,000], Senate Bill 863 Grant 88%, Capital Improvement Project Fund 12%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt Resolution No. 2015-181 which contains assurances and information required by the Board of State and Community Corrections (BSCC) for the County of Riverside (County) to proceed with submitting a formal application for funding under Senate Bill 863 (SB 863), Adult Local Criminal Justice Facilities (ALCJF) Construction Program (SB 863 Construction Program) for the Larry D. Smith Correction Facility (SCF) Rehabilitation Project;
2. Commit to the required match contribution of the project budget, setting aside \$10,000,000 of general fund balance as cash solely for the SB 863 Facilities Construction Financing Program;

(Continued)

FISCAL PROCEDURES APPROVED
PAUL ANGLIO, CPA, AUDITOR-CONTROLLER
BY: Esteban Hernandez 8/10/15

Robert Field
Assistant County Executive Officer/EDA
By: Jeff Van Wagenen, Managing Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 90,000,000	\$ 0	\$ 90,000,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 10,000,000	\$ 0	\$ 10,000,000	\$ 0	

SOURCE OF FUNDS: \$80M Senate Bill 863 Grant, 88% ; \$10M Capital Improvement Project Fund transferred from General Fund Contingency 12%

Budget Adjustment: Yes
For Fiscal Year: 2015/16

C.E.O. RECOMMENDATION:

APPROVE

REVIEWED BY CIP

Ivan M. Chand

Ivan M. Chand 8/10/2015

BY:

Imelda Delos Santos

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Jeffries and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Benoit
Nays: None
Absent: Ashley
Date: August 18, 2015
xc: EDA, Sheriff, Auditor

Kecia Harper-Ihem
Clerk of the Board,
By: Kecia Harper-Ihem
Deputy

Prev. Agn. Ref.: 3-21 of 7/07/15

District: 5

Agenda Number:

3-15

Rainald G. FORM APPROVED COUNTY COUNSEL
 Jerry Gutierrez for
 BY: GREGORY P. PRIAMOS
 DATE: 7/10/15
 Departmental Conference

Assistant Sheriff,

Stan Sheriff
 Sheriff

- A-30
- 4/5 Vote
- Positions Added
- Change Order

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Adoption of Resolution No. 2015-181 for Assurances of and Application for Funding under Senate Bill 863, Adult Local Criminal Justice Facilities Construction Program for the Larry D. Smith Correctional Facility Rehabilitation Project, District 5, [\$90,000,000], Senate Bill 863 Grant 88%, Capital Improvement Project Fund 12%

DATE: August 6, 2015

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RECOMMENDED MOTION: (Continued)

3. Review and approve the forms of the project documents for the SB 863 Facilities Construction Financing Program, including Project Delivery and Construction Agreement (PDCA), BSCC Jail Construction Agreement, Ground Lease, Right of Entry for Construction and Operation, and Facility Sublease, and authorize the County Executive Officer or his designee to execute in substantially similar form at the appropriate time;
4. Authorize the Economic Development Agency (EDA) to incur any relevant and necessary costs not-to-exceed \$100,000 required to submit a competitive application to the BSCC including but not limited to any preliminary design costs with Reimbursement from Capital Improvement Program (CIP) Contingency Funds;
5. Approve and authorize the Chairman of the Board of Supervisors or his designee to sign and submit the application for funding to the BSCC;
6. Authorize the EDA and the Sheriff Department to proceed with the proposed project in its entirety, if a conditional award of State financing is received; and
7. Approve and direct the Auditor-Controller to create a budget adjustment for \$10 million, if SB 863 grant funds are awarded, for the ALCJF Construction Program for the SCF Rehabilitation Project as shown on Schedule A.
8. Authorize EDA and Sheriff to seek funding preference based on the County having met the following preference criteria: (1) commitment for adequate County contribution funds, (2) approving the forms of the Project documents deemed necessary, as identified by the State Public Works Board (SPWB) to the BSCC, to effectuate the financing authorized by SB 863, (3) authorization to execute the financing program project documents, and (4) documentation evidencing California Environmental Quality Act (CEQA) compliance has been completed.

BACKGROUND:

Summary

On June 20, 2014, SB 863 was approved by the governor of California and became law authorizing State lease-revenue bond financing for the acquisition, design and construction of ALCJF in California. The Legislature found that California's current challenges in managing jail populations follow decades of overcrowded and aging jail facilities, and piecemeal, erratic, and incomplete responses to dealing with these problems. By improving adult criminal justice housing with an emphasis on expanding program and treatment space, this financing will serve a critical purpose by promoting public safety.

On June 10, 2015, the BSCC released the Request for Proposals (RFP) and associated application packet for SB 863 for construction of ALCJF. SB 863 provides up to \$500 million in State lease-revenue bond financing authority for the acquisition, design and construction of ALCJF in California. As a large county, the County is eligible to apply for a maximum of \$80 million in funding to rehabilitate a portion of SCF. The completed application packet must be submitted to the BSCC by August 28, 2015. In anticipation of this funding opportunity, EDA and the Sheriff Department have jointly established a project team to work with Carter Goble Associates, LLC (CGL) to coordinate the funding application including any required preliminary project feasibility studies.

(Continued)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: Adoption of Resolution No. 2015-181 for Assurances of and Application for Funding under Senate Bill 863, Adult Local Criminal Justice Facilities Construction Program for the Larry D. Smith Correctional Facility Rehabilitation Project, District 5, [\$90,000,000], Senate Bill 863 Grant 88%, Capital Improvement Project Fund 12%

DATE: August 6, 2015

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SCHEDULE A

Decrease appropriations: 10000-1109000000-581000	Appropriations for contingency	\$10,000,000
Increase appropriations: 10000-1101000000-551100	Contributions to other funds	\$10,000,000
Increase estimated revenue: 30700-1104200000-790600	Contributions from other count funds	\$10,000,000
Increase appropriations: 30700-1104200000-536780	Interfund Exp-Capital Projects	\$10,000,000

2
3 RESOLUTION NO. 2015-181

4
5 THE LARRY D. SMITH CORRECTIONAL FACILITY REHABILITATION PROJECT FOR
6 THE ADULT LOCAL CRIMINAL JUSTICE FACILITIES CONSTRUCTION FINANCING
7 PROGRAM (SB 863)

8
9 **WHEREAS**, The County of Riverside Sheriff Department (Sheriff) and the Economic
10 Development Agency (EDA) have established a collaborative team to secure funding to
11 improve housing with an emphasis on expanding program and treatment space;

12 **WHEREAS**, the Larry D. Smith Correctional Facility (SCF) was selected as an ideal
13 location for this program, the proposed SCF Rehabilitation Project will consist of the demolition
14 of three small dormitory buildings and the construction of one dormitory building with the same
15 capacity, the addition of a clinic and a sheltered housing unit, as well as expanded programs
16 and treatment space for inmates with mental illness;

17 **WHEREAS**, special focus shall be placed on treatment and evidence based programs
18 that improve reentry and reduce recidivism; and

19 **WHEREAS**, the County of Riverside (the County) is seeking funding preference for its
20 proposed project within the Adult Local Criminal Justice Facilities Construction Financing
21 Program (the SB 863 Financing Program) based on its (1) commitment for adequate County
22 contribution funds, (2) approving the forms of the Project documents deemed necessary, as
23 identified by the State Public Works Board (SPWB) to the Board of State and Community
24 Corrections (BSCC), to effectuate the financing authorized by Senate Bill 863, (3) authorization
25 to execute the financing program Project documents, and (4) documentation evidencing
26 California Environmental Quality Act (CEQA) compliance has been completed.

FORM APPROVED COUNTY COUNSEL
BY: *Marsha Victor* 8/10/15
MARSHA VICTOR
DATE

1 **NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED** by the
2 Board of Supervisors of the County of Riverside, State of California, in regular session
3 assembled on August 18, 2015, as follows:

- 4 1. Names, Titles Positions. The following County staff are approved to serve as key
5 personnel for the project: Robert Field, Assistant County Executive Officer/EDA as
6 County Construction Administrator; Ed Corser, County Financial Director or
7 incumbent as Project Financial Officer; and Misha Benjamin, Correctional Lieutenant,
8 Project Contact Person;
- 9 2. Approval of Forms of and Authorization of Appropriate Signatories. The following
10 forms of the project documents deemed necessary, as identified by the State Public
11 Works Board (SPWB), to the Board of State and Community Corrections (BSCC) to
12 effectuate the financing authorized by the legislation, are approved, including the
13 Project Delivery and Construction Agreement (PDCA), Board of State and Community
14 Corrections Jail Construction Agreement, Ground Lease, Right of Entry for
15 Construction and Operation, and Facility Sublease, and authorize the County
16 Executive Officer or his designee to execute in substantially similar form at the
17 appropriate times;
- 18 3. Authorize Appropriate County Official. Approve and authorize the Chairman of the
19 Board of Supervisors or his designee to sign the application for funding to the BSCC;
20 Adherences. Assures that the County will adhere to State requirements and terms of
21 the agreements between the County, the BSCC and the SPWB in the expenditure of
22 any State financing allocation and county contribution funds;
- 23 4. Assurance of Matching Funds. Assures that the County has appropriated the
24 adequate amount of available matching funds to satisfy the County's contribution and
25 is compatible with the State's lease revenue bond financing. The amount of cash
26 identified in the County's SB 863 Financing Program Proposal Form, in the sum of
27 \$10,000,000 from the County's General Fund balance;
- 28

1 5. Lawfully Available Funds. The County cash contribution funds, as described in the
2 documentation accompanying the County's SB 863 Financing Program Proposal
3 Form, have been derived exclusively from lawfully available funds of the County. The
4 payment of the County cash contribution funds for the proposed adult local criminal
5 justice facility project (the Project) (i) is within the power, legal right, and authority of
6 the County; (ii) is legal and will not conflict with or constitute on the part of the County
7 a material violation of, a material breach of, a material default under, or result in the
8 creation or imposition of any lien, charge, restriction, or encumbrance upon any
9 property of the County under the provisions of any charter instrument, bylaw,
10 indenture, mortgage, deed of trust, pledge, note, lease, loan, installment sale
11 agreement, contract, or other material agreement or instrument to which the County is
12 a party or by which the County or its properties or funds are otherwise subject or
13 bound, decree, or demand of any court or governmental agency of body having
14 jurisdiction over the County or any of its activities, properties or funds; and (iii) have
15 been duly authorized by all necessary and appropriate action on the part of the
16 governing body of the County;

17 6. No Prior Pledge. The county cash contribution funds and the Project are not and will
18 not be mortgaged, pledged, or hypothecated by the County in any manner or for any
19 purpose and have not been and will not be the subject of a grant of a security interest
20 by the County. In addition, the county cash contribution funds and the Project are not
21 and will not be mortgaged, pledged, or hypothecated for the benefit of the County or
22 its creditors in any manner or for any purpose and have not been and will not be the
23 subject of a grant of a security interest in favor of the County or its creditors. The
24 County shall not in any manner impair, impede or challenge the security, rights and
25 benefits of the owners of any lease-revenue bonds sold by the State Public Works
26 Board for the Project (the "Bonds") or the trustee for the Bonds.

- 1 7. Authorization to Proceed with the Project. The project proposed in the County's SB
 2 863 Financing Program proposal is authorized to proceed in its entirety when and if
 3 state financing is awarded for the Project within the SB 863 Financing Program.
 4 8. Staffing. Assures that the County will fully and safely staff and operate the facility
 5 being constructed (consistent with Title 15, California Code of Regulations, Chapter 1,
 6 subchapter 6 section (j) 5) within 90 days after project completion;
 7 9. Site Control. Assures that the County has project site control through either fee
 8 simple ownership of the site or comparable long-term possession of the site, and right
 9 of access to the project sufficient to assure undisturbed use and possession of the
 10 site, and will not dispose of, modify the use of, or change the terms of the real
 11 property title, or other interest in the site of facility subject to construction, or lease the
 12 facility for operation to other entities, without permission and instructions from the
 13 BSCC; and.
 14 10. Attest to the Land Value. Attests to \$225,423 as the current fair market land value for
 15 the proposed expanded jail facility site.

16 **BE IT FURTHER RESOLVED THAT THE BOARD OF SUPERVISORS** has by minute
 17 order adopted on the date hereof, authorized and granted the Sheriff in conjunction with EDA
 18 full authority to apply for and secure State funding through SB 863 to pursue construction of the
 19 SCF Rehabilitation Project, as SB 863 Funding is best suited to the County's correctional
 20 needs and offers a significant opportunity to secure State funding for the expansion of this jail
 21 construction project; and that the custodian of the documents upon which this decision is based
 22 is the Clerk of the Board of Supervisors, and that such documents are located at 4080 Lemon
 23 Street, Riverside, California.

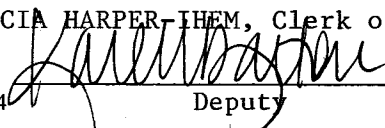
24 ROLL CALL:

25 Ayes: Jeffries, Tavaglione, Washington and Benoit
 26 Nays: None
 27 Absent: Ashley

28 The foregoing is certified to be a true copy of a resolution duly
 adopted by said Board of Supervisors on the date therein set forth.

KECIA HARPER-IHEM, Clerk of said Board

By



Deputy

**PROJECT DELIVERY AND CONSTRUCTION AGREEMENT
[ENTER PROGRAM NAME] FINANCING PROGRAM**

by and among

**STATE PUBLIC WORKS BOARD
OF THE STATE OF CALIFORNIA**

and

**[DEPARTMENT OF CORRECTIONS AND REHABILITATION
OF THE STATE OF CALIFORNIA**

and]

**BOARD OF STATE AND COMMUNITY CORRECTIONS
OF THE STATE OF CALIFORNIA**

and

[ENTER COUNTY NAME]

Effective Date of **[MONTH] [DAY], 20[YEAR]**

**(FOR A [ENTER TYPE OF FACILITY] FACILITY
LOCATED IN THE COUNTY OF [ENTER COUNTY NAME])**

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PROJECT DELIVERY AND CONSTRUCTION AGREEMENT
[ENTER PROGRAM NAME] FINANCING PROGRAM
(FOR A [ENTER TYPE OF FACILITY] FACILITY
LOCATED IN [ENTER COUNTY NAME] COUNTY)

This PROJECT DELIVERY AND CONSTRUCTION AGREEMENT (this "Agreement") is entered into as of [MONTH] [DAY], 20[YEAR], (the "Effective Date") by and among the STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA (the "Board"), an entity of state government of the State of California (the "State"), [the DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA (the "Department"), an entity of state government of the State,] the BOARD OF STATE AND COMMUNITY CORRECTIONS OF THE STATE OF CALIFORNIA (the "BSCC"), an entity of state government of the State, and the COUNTY OF [ENTER COUNTY NAME] (the "Participating County"), a Political Subdivision of the State. For purposes of this Agreement, the Board, the Department, the BSCC and the Participating County are referred to collectively as the "Parties," and individually as a "Party." The Board, the Department and the BSCC are referred to collectively herein, as the "Agencies" and individually as an "Agency."

WHEREAS, pursuant to [ENTER STATUTE] (the "Law"), the Board is authorized to finance the acquisition, design and construction of a [ENTER TYPE OF FACILITY] facility approved by the BSCC pursuant to Section [ENTER SECTION] of the California Government Code (the "[ENTER PROGRAM NAME] Financing Program"); and

WHEREAS, pursuant to California Code of Regulations Title 15, Division 1, Chapter 1, Subchapter [ENTER SUBCHAPTER] and this Agreement and other agreements relating to this Project, the cost of certain design and construction activities will be eligible for reimbursement under the [ENTER PROGRAM NAME] Financing Program; and

WHEREAS, the Participating County has proposed to build or renovate a [ENTER TYPE OF FACILITY] facility, as more particularly described in **Exhibit A** attached hereto (the "Project"), to be located at [ENTER PHYSICAL ADDRESS], real property controlled by the Participating County through fee-simple ownership (the "Site"); and

WHEREAS, the Participating County intends to lease the Site to the [ENTER "Department" OR "BSCC"] pursuant to a Ground Lease in substantially the form attached hereto as **Exhibit B** (the "Ground Lease") executed by and between the Participating County and the [ENTER "Department" OR "BSCC"] and consented to by the Board; and

WHEREAS, the [ENTER "Department" OR "BSCC"], as lessee under the Ground Lease, and the Participating County intend to enter a Right of Entry for Construction and Operation (the "Right of Entry") in substantially the form attached hereto as **Exhibit C** concurrently with the execution of the Ground Lease authorizing the Participating County to enter the Site for the purpose of constructing the Project on the Site and for operation of the Project upon substantial completion of construction (the Site and the Project, collectively, the "Facility"), as more particularly described herein; and

WHEREAS, concurrently with the execution of this Agreement, the BSCC and the

Participating County, with the consent of the Board [and the Department], intend to enter into an agreement to assist in complying with BSCC's rules and regulations concerning jail construction for the [ENTER PROGRAM NAME] Financing Program (the "BSCC Agreement"); and

WHEREAS, the Board intends to oversee and issue lease revenue bonds for the Project, subject to satisfaction of certain conditions and requirements of the Board, including but not limited to establishment of Project scope, cost and schedule; approval of preliminary plans; involvement in working drawings approval and authorization for the Participating County to request construction bids; requesting actions to be taken to obtain one or more interim loans in connection with the Project (the "Interim Loan") and, subject to section 1.3 below, the Board intends to issue and sell its lease revenue bonds to repay the Interim Loan and provide additional financing for the Project, as necessary (the "Bonds"); and

WHEREAS, prior to authorization by the Board of actions to be taken to provide for the Interim Loan, the [ENTER "Department" OR "BSCC"] shall have certified to the Board that the Participating County is a participating county as required by Section [ENTER SECTION] of the California Government Code and the BSCC shall have approved the Project in accordance with Section [ENTER SECTION] of the California Government Code; and

WHEREAS, an Interim Loan for the Project may be made pursuant to Sections 16312 and 16313 of the California Government Code (Pooled Money Investment Board loans), Section 15849.1 of the California Government Code (General Fund loans), and/or any other appropriate source in an amount or amounts, which in the aggregate do not exceed the Maximum State Financing (as hereinafter defined); and

WHEREAS, the agent for sale for all Board bonds is the State Treasurer; and

WHEREAS, concurrently with the issuance of the Bonds, the [ENTER "Department" OR "BSCC"], as lessee under the Ground Lease, intends to enter into a Site Lease whereby the [ENTER "Department" OR "BSCC"], as lessor, shall lease the Site to the Board, as lessee (the "Site Lease"); and

WHEREAS, concurrently with the execution of the Site Lease, the Board, as lessee under the Site Lease, intends to enter into a Facility Lease whereby the Board, as lessor, shall lease the Facility to the [ENTER "Department" OR "BSCC"], as lessee (the "Facility Lease"); rental payments under the Facility Lease shall secure the payment of principal of and interest on the Bonds; and

WHEREAS, concurrently with the execution of the Facility Lease, the [ENTER "Department" OR "BSCC"], as lessee under the Facility Lease, and the Participating County intend to enter a Facility Sublease in substantially the form attached hereto as **Exhibit D**, whereby the [ENTER "Department" OR "BSCC"], as sublessor, shall lease the Facility to the Participating County, as sublessee (the "Facility Sublease"), for its use, operation and maintenance; and

WHEREAS, in the event the Board is unable to issue the Bonds to finance the Project and the Interim Loan has been provided, the [ENTER "Department" OR "BSCC"] shall commit a sufficient amount of its annual support appropriation to repay the Interim Loan and any other

interim financing costs associated with the Interim Loan.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements of the Parties set forth herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE 1

GENERAL

1.1 General Covenants, Acknowledgements and Agreements of the Parties.

(a) The Parties hereto acknowledge and agree that an authorization by the Board to request the Interim Loan and the issuance of the Bonds by the Board is done in reliance upon, among other things, the promise of the relevant Parties to execute, deliver and perform their respective obligations, as applicable, under the Site Lease, the Facility Lease, the Facility Sublease, a Tax Agreement and Certificate in a form satisfactory to the Board to be executed in connection with the issuance of the Bonds (the "Tax Certificate"), a Continuing Disclosure Agreement in a form satisfactory to the Board to be executed in connection with the issuance of the Bonds (the "Continuing Disclosure Agreement") and all related certificates, agreements or other documents, including an indenture and supplemental indenture, if any, authorizing the Bonds that the Chair or Executive Director of the Board or a duly authorized designee thereof may deem necessary or desirable to effectuate the sale of the Bonds. Such indenture, supplemental indenture, if any, the Site Lease, the Facility Lease, the Facility Sublease, the Tax Certificate and the Continuing Disclosure Agreement, are collectively referred to herein as the "Bond Documents."

(b) The Parties accept and agree to comply with, to the extent respectively applicable to them, all terms, provisions, conditions, and commitments of this Agreement, the Project Documents (as hereinafter defined) and the Bond Documents, including all incorporated documents, and that they will do and perform all acts and things permitted by law to effectuate the issuance of the Bonds.

(c) The Participating County[, the Department] and the BSCC agree and acknowledge that the Project is subject to approval and oversight by the Board and the State Department of Finance ("Finance") consistent with the policies and laws governing the expenditure of a State capital outlay appropriation.

1.2 Approvals, Consents and Actions Necessary to Maintain Eligibility in the [ENTER PROGRAM NAME] Financing Program. The Participating County acknowledges its eligibility for Project financing pursuant to the [ENTER PROGRAM NAME] Financing Program is subject to and contingent upon the following approvals, consents and actions by the Board and Finance;

(a) A determination by the Board that the Site meets the standard requirements for a site being leased in connection with the issuance by the Board of its lease revenue bonds;

(b) A determination by the Board that the Participating County match as set forth in Article 3 has been satisfied as required by the Law and the source of the Cash (hard) Match (as hereinafter defined) and any associated security or terms related thereto has been determined by the Board to be compatible with the financing of the Project pursuant to the [ENTER PROGRAM NAME] Financing Program;

(c) The Board has established the scope, cost and schedule for the Project consistent with the Participating County's initial proposal submitted to the BSCC and the Participating County has agreed that the Project shall be constructed and completed in accordance with such Project scope, cost and schedule established by the Board, except to the extent any modifications thereof may be approved by the Board through the State's standard capital outlay process;

(d) The Board has approved the Ground Lease, the Right of Entry and the Facility Sublease;

(e) Both the Board and Finance have approved the Preliminary Plans for the Project. As used herein "Preliminary Plans" shall mean a site plan, architectural floor plans, elevations, outline specifications, and a cost estimate, for each utility, site development, conversion, and remodeling project, the drawings shall be sufficiently descriptive to accurately convey the location, scope, cost, and the nature of the improvement being proposed;

(f) Finance has approved the Working Drawings for the Project and authorized the Participating County to proceed with soliciting competitive bids for construction of the Project. As used herein "Working Drawings" shall mean a complete set of plans and specifications showing and describing all phases of a project, architectural, structural, mechanical, electrical, civil engineering, and landscaping systems to the degree necessary for the purposes of accurate bidding by contractors and for the use of artisans in constructing the project;

(g) The [ENTER "Department" OR "BSCC"] has provided the Board the certification required by Section [ENTER SECTION] of the California Government Code, which certification the [ENTER "Department" OR "BSCC"] intends to provide upon satisfaction of the required statutory and regulatory conditions;

(h) The Board has adopted a Resolution authorizing steps be taken to seek the Interim Loan together with declaring its intent to reimburse any such Interim Loan with the proceeds from the Bonds;

(i) A determination by the Board that it will receive with respect to the Bonds the normal and customary opinions and certificates delivered in connection with an issuance of lease revenue bonds by the Board; and

(j) The sale of the Bonds.

1.3 [ENTER PROGRAM NAME] Lease Revenue Bond Financing. State financing for the [ENTER PROGRAM NAME] Financing Program is predicated on the Board's ability to issue Bonds for the Project. The Board, acting in good faith, intends to authorize the request for

the Interim Loan and, subject to approvals, consents, and actions set forth in section 1.2, to issue Bonds for the Project. The Agencies will make reasonable and good faith efforts to assist in gaining assurance that the Site, the Project, the Participating County's ultimate use of the Project and the Cash (hard) Match (as hereinafter defined) are developed and implemented in such a way to facilitate the financing of the Project through the issuance and sale of the Bonds.

Prior to the Board's authorization to request the Interim Loan, the [ENTER "Department" OR "BSCC"] shall have certified to the Board that the Participating County is a participating county as required by Section [ENTER SECTION] of the California Government Code and the BSCC shall have approved the design and construction of the Project in accordance with Section [ENTER SECTION] of the California Government Code.

Notwithstanding the Board's good faith efforts to authorize and provide financing for the Project, the State (including without limitation the Board[, the Department,] and the BSCC) shall not be obligated to issue Bonds for the Project or authorize the Interim Loan request upon the Board's good-faith determination that such financing is not feasible or appropriate, based upon any one or more of the following factors: the lack of suitability of the Project's configuration or site for lease revenue bond financing, local funding that is incompatible with the issuance of lease revenue bonds by the Board, adverse market conditions, adverse outcomes to legal challenges, inability to obtain access to the financial markets or inability to obtain reasonable rates, inability to receive opinions and certificates customarily delivered in connection with the issuance of lease revenue bonds, or another occurrence or state of affairs that would make it objectively infeasible or inappropriate for the Board to issue Bonds or authorize the Interim Loan request.

In the event the Board determines that it is not feasible or appropriate to issue Bonds or to authorize the Interim Loan request, the Participating County is not entitled to receive the Maximum State Financing (as hereinafter defined) or other State funding for the Project, and shall not receive reimbursement from the State for any Project costs. However, in the event the Board is unable to issue the Bonds to finance the Project and the Interim Loan has been provided, the [ENTER "Department" OR "BSCC"] shall commit a sufficient amount of its annual support appropriation to repay the Interim Loan and any other interim financing costs associated with the Interim Loan and all associated costs.

1.4 The [Department and the] BSCC Act as Liaison of the Board and Finance to the Participating County. The Parties hereto acknowledge that obtaining the approvals and consents of the Board and/or Finance and the provision of documents to the Board and/or Finance as set forth in this Article I and otherwise herein shall be a responsibility of [the Department and] the BSCC. The [Department and the] BSCC will act as liaisons between the Participating County and the Board and Finance, and on their own behalf and behalf of the Board and Finance, will work with the Participating County to obtain such consents and approvals, and to provide such documents to the Board and Finance, as applicable.

1.5 Representations and Warranties of the Participating County.

(a) Under the provisions of the State Constitution, the applicable State statutes, and applicable jurisprudence of the State, the Participating County has the power to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated

hereby and to perform its obligations hereunder.

(b) The Participating County has taken all actions and has obtained all consents necessary to enable the Participating County to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The person executing and delivering this Agreement on behalf of the Participating County has been duly authorized and empowered to do so.

(d) The execution and delivery of this Agreement on behalf of the Participating County will bind and obligate the Participating County to the extent provided by the terms hereof.

(e) There exists no litigation or other proceeding pending or threatened against the Participating County that, if determined adversely, would materially and adversely affect the ability of the Participating County to consummate the transactions contemplated hereby or to perform its obligations hereunder.

(f) The execution and delivery of this Agreement and the Ground Lease, the Right of Entry, the BSCC Agreement and the Facility Sublease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or material breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Participating County is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Participating County, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, the Ground Lease, the Right of Entry, the BSCC Agreement or the Facility Sublease, or the financial condition, assets, properties or operations of the Participating County.

1.6 Representations and Warranties of the Board.

(a) Under the provisions of the State Constitution, the applicable State statutes, and applicable jurisprudence of the State, the Board has the power to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) The Board has taken all actions and has obtained all consents necessary to enable the Board to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The person executing and delivering this Agreement on behalf of the Board has been duly authorized and empowered to do so.

(d) The execution and delivery of this Agreement on behalf of the Board will bind and obligate the Board to the extent provided by the terms hereof.

(e) There exists no litigation or other proceeding pending against the Board (with service of process having been accomplished) that, if determined adversely, would materially and adversely affect the ability of the Board to consummate the transactions contemplated hereby or to perform its obligations hereunder.

1.7 Representations and Warranties of the [Department and the]BSCC.

(a) Under the provisions of the State Constitution, the applicable State statutes, and applicable jurisprudence of the State, the [Department and the]BSCC each have the power to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) The [Department and the]BSCC have each taken all actions and have obtained all consents necessary to enable the [Department and the]BSCC to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The persons executing and delivering this Agreement on behalf of the [Department and the]BSCC have been duly authorized and empowered to do so.

(d) The execution and delivery of this Agreement on behalf of the [Department and the]BSCC will bind and obligate the [Department and the]BSCC to the extent provided by the terms hereof.

(e) There exists no litigation or other proceeding pending against the [Department or the]BSCC (with service of process having been accomplished) that, if determined adversely, would materially and adversely affect the ability of the [Department or the]BSCC to consummate the transactions contemplated hereby or to perform its obligations hereunder.

(f) The execution and delivery of this Agreement and the Ground Lease, the Right of Entry, the Site Lease, the Facility Lease, the BSCC Agreement and the Facility Sublease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the [Department or the]BSCC is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the [Department or the]BSCC, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, the Ground Lease, the Right of Entry, the BSCC Agreement or the Facility Sublease, or the financial condition, assets, properties or operations of the [Department or the]BSCC.

1.8 Compliance with Terms and Conditions of the Project Documents. The Parties agree to comply with all terms and conditions relating to the respective Party of this Agreement, the BSCC Agreement, the Ground Lease, the Right of Entry and all exhibits and schedules attached hereto and thereto relating to the Party (collectively, the "Project Documents"), as well as all applicable laws including, without limitation, the Law and those laws, regulations and guidelines set forth in the BSCC Agreement.

1.9 Conflicts Between Terms of Documents. In the event of any inconsistency in the Project Documents, except as otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1) this Agreement; 2) the Ground Lease, 3) the BSCC Agreement and all exhibits and schedules attached thereto, and 4) the Right of Entry. In the event the Bonds are issued, any inconsistency between the Project Documents and the Bond Documents shall be resolved by giving precedence to the Bond Documents. To the extent the Parties mutually agree that a provision of a particular document should control with respect to an inconsistency between that document and another document or documents, notwithstanding the other provisions of this section, such provision shall control.

1.10 Indemnity. As required by Section [ENTER SECTION] of the California Government Code, the Participating County hereby agrees to indemnify, defend and save harmless the State, including but not limited to the Board[, the Department] and the BSCC, and each of their respective officers, governing members, directors, officials, employees, subcontractors, consultants, and agents (collectively, "Indemnitees") for any and all claims and losses arising at any time out of the acquisition, design, construction, operation, maintenance, use and occupancy of the Project. The Participating County shall not be obligated to provide indemnity or defense where the claim arises out of the active negligence or willful misconduct of the Indemnitees. These obligations shall survive any termination of this agreement.

1.11 Assignment or Subletting of the Facility.

(a) *Assignment of Rights and Interest under this Agreement.* Except as otherwise contemplated hereunder, the Participating County may not sublicense, assign, or otherwise confer upon any other person or entity its rights or interests under this Agreement, nor may the Participating County delegate any of its duties or responsibilities required by this Agreement, whether by operation of law or otherwise, without the express, prior written consent of the Agencies, the rights and obligations hereunder imposed being personal to the Participating County.

(b) *Assignment or Subletting of the Facility.* The Participating County and the [ENTER "Department" OR "BSCC"] hereby covenant and agree that none of the Ground Lease, the Facility Lease or the Facility Sublease nor any interest of such Parties thereunder shall be sold, mortgaged, pledged, assigned, or transferred by the Parties thereto by voluntary act or by operation of law or otherwise; provided, however, that the Facility may be subleased in whole or in part by the Participating County with the prior written consent of the [ENTER "Department" OR "BSCC"] and the Board to the form and substance of such sublease, which consent shall not be unreasonably withheld, and, provided further that, any such sublease shall be subject to the following conditions:

(i) Any sublease of the Facility by the Participating County shall

explicitly provide that such sublease is subject to all rights of the [ENTER "Department" OR "BSCC"] and the Board under the Facility Sublease, including, the right to re-enter and re-let the Facility or terminate such lease upon a default by the Participating County; and

(ii) At the request of the [ENTER "Department" OR "BSCC"] or the Board, the Participating County shall furnish the [ENTER "Department" OR "BSCC"], the Board and the State Treasurer with an opinion of nationally-recognized bond counsel acceptable to the Board to the effect that such sublease will not, in and of itself, cause the interest on the Bonds to be included in gross income for federal income tax purposes.

(c) *Restrictions on Private Use of the Facility.* The Participating County acknowledges that its ability to assign or sublet the Facility is subject to the provisions of section 6.1.2 hereof.

1.12 Relationship of the Parties. The Parties hereto acknowledge and agree that, to the extent expressly provided in this Agreement, the relationship of the Participating County to the Agencies is that of an agent to the Agencies and that the Participating County is principally responsible for the acquisition, design, construction, maintenance, and operation of the Project. Other than as set forth herein, nothing in this Agreement shall create between the Participating County and any of the Agencies the relationship of joint venturers, partners or any other similar or representative relationship, and the Participating County shall not hold itself out as an agent (except as expressly provided herein), representative, partner, member or joint venturer of the Agencies. The Participating County shall not make for or on behalf of the Agencies, or subject the Agencies to, any contract, agreement, warranty, guaranty, representation, assurance or other obligation, which has not been approved in advance in writing by the applicable Agency. This Agreement is for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns, and no third party (including without limitation the owners of the Bonds) is intended to or shall have any rights hereunder.

ARTICLE 2

TERM AND TERMINATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall commence on the Effective Date and shall terminate upon the later of (i) completion of the construction of the Project or (ii) if the Board issues the Bonds, execution and delivery of the Facility Sublease, unless terminated earlier as provided in section 2.2. The provisions of certain sections hereof as indicated by the express terms thereof will survive termination of this Agreement.

2.2 Termination of Agreement.

(a) *Termination by the State.* The [Department or the] BSCC, with the consent of the Board, or the Board may terminate this Agreement in the event any of the following occurs:

(i) The Participating County's breach of a material term of this Agreement, any Project Document or any Applicable Laws (as defined in the BSCC Agreement) provided the Participating County has not cured such breach in all respects within thirty (30)

days from notice of said breach, which cure period may be extended for a reasonable time with the consent of the Agencies if the Participating County demonstrates that such additional time is required to cure such breach in a diligent and commercially reasonable manner;

(ii) Substantive alteration of the Board approved scope, cost or schedule for the Project as set forth in **Exhibit A** without the prior written approval of the Board;

(iii) Failure to execute the Ground Lease or the Right of Entry;

(iv) Failure to provide the Participating County Funding (as hereinafter defined) when and as required under this Agreement, the Law or any Project agreement to which the Participating County is a party;

(v) In the event the Board determines the Participating County is no longer eligible for Project financing under the [ENTER PROGRAM NAME] Financing Program as set forth in section 1.2 hereof; or

(vi) Termination of the BSCC Agreement as provided for in Article 1, Section C of the BSCC Agreement.

(b) *Termination by the Participating County.* The Participating County may, prior to the State providing any amount of financing, terminate this Agreement in the event any of the following occurs:

(i) The State's breach of a material term of this Agreement, any Project Document or any Applicable Laws (as defined in the BSCC Agreement) provided the State has not cured such breach in all respects within thirty (30) days from notice of said breach, which cure period may be extended for a reasonable time with the consent of the Participating County if the State demonstrates that such additional time is required to cure such breach in a diligent and commercially reasonable manner;

(ii) Failure of the State to execute the Ground Lease or the Right of Entry;

(iii) In the event the Board determines the Participating County is no longer eligible for Project financing under the [ENTER PROGRAM NAME] Financing Program as set forth in section 1.2 hereof.

(c) *Agreement.* The Parties may terminate this Agreement by mutual agreement. The Agencies agree to terminate this agreement in the event that the Participating County determines it cannot proceed with the Project after initial construction bids are received, but before any construction contract is awarded.

(d) *Notice of Termination.* Prior to terminating this Agreement under the provisions of this Article 2, the Parties shall provide to each other, as applicable, at least thirty (30) calendar days written notice, stating the reason(s) for termination and effective date thereof.

(e) *No Impairment.* Nothing in this Article 2 in any way alters or limits the

authority of the Agencies to withhold all or a portion of the Maximum State Financing (as hereinafter defined) in accordance with law or otherwise as permitted hereunder or any other right or remedy available to the State at law or in equity for breach of this Agreement.

ARTICLE 3

COST SHARING OF THE PROJECT

3.1 Financing Eligibility of the Project.

(a) *General.* Subject to the terms and provisions hereof, the costs for design and construction of the Project shall be shared by the State and the Participating County with the State providing financing up to a maximum of [REDACTED] dollars (\$ [REDACTED]) ("Maximum State Financing") and the Participating County providing the Cash (hard) Match (as hereinafter defined) funding and the In-Kind (soft) Match (as hereinafter defined) funding (collectively, the "Participating County Funding" and together with other Participating County-borne project costs not included as the Participating County Funding and the Maximum State Financing, the "Total Project Costs"). Provided, however, that the Board may provide all or a portion of the Maximum State Financing for Project costs at its discretion as set forth herein. The sources for the Maximum State Financing shall be limited to the proceeds of the Interim Loan, and the proceeds of the Bonds. If Bonds are issued and sold, the proceeds will be used to repay the Interim Loan and to provide additional financing for the Project as appropriate. If the Bonds are issued and sold, in no event or circumstance shall the State or the Agencies be obligated to pay the Participating County under this Agreement or any other Project Document any amount in excess of the Maximum State Financing.

(b) *Cash (hard) Match.* Subject to all terms and provisions of this Agreement, the Participating County agrees to appropriate and spend cash (hard) matching funds for the Project as provided in the BSCC Agreement ("Cash (hard) Match"). **Exhibit E-1** is a detailed description of and certification related to the source or sources of the Cash (hard) Match and any associated security or terms related thereto as approved by the Agencies, which detail and assurance of has been deemed sufficient by the Board to determine that the use of such funds as the Cash (hard) Match is compatible with the financing of the Project pursuant to the [ENTER PROGRAM NAME] Financing Program. Any modifications to the source or sources of the Cash (hard) Match or the associated security and terms related thereto as described in **Exhibit E-1** must be approved by the Agencies. The Participating County shall ensure that all Cash (hard) Match is encumbered prior to Finance approval of proceeding to bid the Construction Contract (as hereinafter defined).

(c) *In-Kind (soft) Match.* Subject to all terms and provisions of this Agreement, the Participating County agrees to provide in-kind (soft) match for the Project as provided in the BSCC Agreement ("In-kind (soft) Match"). The Participating County has provided in **Exhibit E-2** a detailed description of the In-kind (soft) Match for the Project as approved by the Agencies. Any modifications to the In-kind (soft) Match as described in **Exhibit E-2** must be approved by the Agencies.

3.2 Excess Project Costs. In no event shall any Project scope, cost, budget or schedule changes be authorized by the Participating County which would cause the amount of

Total Project Costs to be exceeded unless the Participating County covenants to fund such excess with lawfully available funds and the Participating County first obtains the consent of the Agencies. The Participating County is solely responsible for any and all cost, expenses or fees of the Project which exceed the Maximum State Financing and the Participating County covenants to use its best efforts to promptly appropriate sufficient amounts to cover such cost, expenses or fees. The Participating County waives any and all claims against any of the Agencies or the State in the event that Total Project Costs exceed the amount initially established by the Board.

3.3 Project Cost Savings. To the extent there exists Project cost savings during the Project the amount of such savings shall be applied first to the Participating County to the extent the Participating County has identified Participating County Funding in an amount more than required by the Applicable Laws (as defined in the BSCC Agreement). Thereafter, cost savings shall be shared by the State and the Participating County on a pro rata basis determined by the percentage of the total amount of Project costs financed by the State and the Participating County Funding, respectively. However, in no case may savings be applied to the Participating County that would (1) result in the State providing financing for activities other than eligible design and construction costs; or (2) result in the Participating County contributing less than the percentage of Total Project Costs required by the Applicable Laws.

ARTICLE 4

PROJECT SCOPE, COST AND SCHEDULE

4.1 The Project. See **Exhibit A** for a description of the scope, cost and schedule of the Project, including a narrative description of the Project, budgeted costs related to the Project and a schedule for completion of design and construction of the Project.

4.2 Modification of Project Scope, Cost or Schedule. No substantial change or other substantial modifications to the Project scope, cost or schedule may be made by the Participating County without prior written permission of Finance and recognition by the Board ("Scope Change"). Minor modifications to the project do not require Finance approval and Board recognition, but must be documented and reported on routine progress reports to the BSCC as set forth in the BSCC Agreement. Without limiting the foregoing, the Participating County shall notify the [Department and the]BSCC, and the [ENTER "Department" OR "BSCC"] shall in turn notify Finance and the Board upon any of the following events or circumstances that may constitute a Scope Change:

- (a) More than minor changes which affect the design, project configuration, cost or schedule of the Project;
- (b) A delay or change in the substantial completion or final completion dates for the Project;
- (c) A more than minor change to the design, location, size, capacity or quality of major items of equipment;
- (d) A change in approved budget categories, or movement of dollars between budget categories as indicated in the Board approved scope cost and schedule as identified in

Exhibit A.

As used herein "substantial" is as defined in Section 6863 of the State Administrative Manual. As used herein a minor change is any change which does not rise to the level of a substantial change as defined in Section 6863 of the State Administrative Manual. Finance shall determine whether any reported event or circumstance requires its approval and recognition or other formal action by the Board.

The Participating County agrees that it will give prompt notification in writing to the [Department and the]BSCC of the occurrence of any of the above events and promptly report, in writing, to the [Department and the]BSCC any modifications to the Construction Contract (as hereinafter defined) with respect to the Project. The [ENTER "Department" OR "BSCC"] will provide the aforementioned notices and reports to the Board. The Participating County agrees further that, for purposes of the immediately preceding clause (a) and (c), if unsure whether a particular change is minor it will discuss the appropriate characterization with the [Department and the]BSCC.

4.3 Excess Project Costs. In no event shall any scope, cost or budget changes be authorized which would cause the amount of Total Project Costs to be exceeded unless the Participating County covenants to fund such excess with lawfully available funds and with the consent of the Agencies and so appropriates such funding.

ARTICLE 5

BIDDING AND CONSTRUCTION PHASE OF THE PROJECT

5.1 Construction Covenant of the Participating County. The Participating County acting as agent of the Board and the [ENTER "Department" OR "BSCC"], hereby covenants and agrees to provide and perform or cause to be performed all activities required to acquire, design and construct the Project on behalf of the Board in accordance with the Participating County's established policies and procedures for the design and construction of major capital projects such as the Project. The Participating County shall be responsible to contract for all pre-design, design and construction services, and shall manage the day-to-day design and construction of the Project. The Participating County shall cause the design and construction of the Project to be consistent with the requirements, limitations, and other terms of this Agreement, the other Project Documents, the Law and all Applicable Laws. The Participating County shall also manage all aspects of the development and construction of the Project in accordance with the Project Documents.

5.2 Procurement and Enforcement of Construction Contract. The Participating County shall follow and adhere to all pertinent bidding rules and policies applicable to Participating County capital projects of this type and size. If there is an ambiguity as to the applicability of certain contracting rules and/or policies to the Project, the Participating County will seek advice from its counsel, follow that advice and use its best efforts to enforce the general construction contract (the "Construction Contract") between the Participating County and the contractor selected by the Participating County.

5.3 Completion of the Project. The Participating County acknowledges it is obligated

to undertake and complete the design and construction of the Project in compliance with all of the applicable terms and conditions of the Project Documents and the Participating County agrees to use its best efforts to cause the completion of design and construction of the Project in compliance with the applicable terms and conditions of such documents. The Participating County agrees to complete the Project in accordance with this Agreement and consistent with the scope, cost and schedule established by the Board and attached hereto in **Exhibit A**, as such scope, cost and schedule may be modified with the approval of Finance and the recognition of the Board.

5.4 Project Access. To the extent not inconsistent with the Bond Documents, at all times during design and construction of the Project and after final completion, the Participating County shall provide to employees, subcontractors, and consultants of the Agencies reasonable unrestricted access to observe, monitor and inspect the Project. The Agencies' access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to design or construction of the Project.

5.5 Insurance.

(a) Insurance Obligations of the Participating County.

(i) Requirements during construction. Not later than the start of construction, and continuing through completion of construction of the Project, the Participating County, at its own cost and expense, shall secure and maintain or cause to be secured and maintained (i) fire, lightning and extended coverage insurance on the Project, which initially may be in the form of a builder's risk policy providing coverage in an amount not less than the construction costs expended for the Project and, if no builder's risk insurance is in effect, shall be in the form of a commercial property policy in an amount equal to one hundred percent (100%) of the then current replacement cost of the Project, excluding the replacement cost of the unimproved real property constituting the Site (except that such insurance may be subject to a deductible clause not to exceed [five hundred thousand dollars (\$500,000) or two million five hundred thousand dollars (\$2,500,000)] for any one loss), and (ii) earthquake insurance (if such insurance is available on the open market from reputable insurance companies at a reasonable cost) on any structure comprising part of the Project in an amount equal to the full insurable value of such structure or the amount of the attributable portion of the Interim Financing, whichever is less (except that such insurance may be subject to a deductible clause not to exceed [five hundred thousand dollars (\$500,000) or two million five hundred thousand dollars (\$2,500,000)] for any one loss). The extended coverage endorsement shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, vandalism and malicious mischief and such other hazards as are normally covered by such endorsement.

If such policy is expected to expire in accordance with its terms prior to execution of the Facility Sublease, the Participating County shall give written notice to the Agencies forty-five (45) days prior to the expected expiration date.

(ii) Requirements after construction completion. The Participating County, at its own cost and expense, shall secure and maintain or cause to be secured and maintained from an insurance company or companies approved to do business in the State and maintain after

completion of construction and/or when placing the Project in operation, the following insurance coverage for the Project:

a. General liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence. Evidence of such insurance shall be on a General Liability Special Endorsement form and should provide coverage for premises and operations, contractual, personal injury and fire legal liability;

b. By signing this Agreement, the Participating County hereby certifies that it is aware of the provisions of Section 3700, *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply, and it will cause its subtenants and assignees to comply, with such provisions at all such times as they may apply during the term of this Agreement.

c. Auto insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of not less than one million dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles or coverage for any auto.

(iii) Additional Insureds. The Participating County agrees that the Board, the Department, and the BSCC and their respective officers, agents and employees shall be included as additional insured in all insurance required herein.

(iv) Insurance Certificate. Any and all insurance policies related to the Project shall name the Board and the [ENTER "Department" OR "BSCC"] as additional insured parties and the Participating County shall deliver to the Agencies a certificate or certificates of insurance authorized by the insurers describing the insurance coverage and stating that it is in full force and effect.

(v) Self-Insurance. Notwithstanding any other provision of this Section, the Participating County may satisfy the insurance obligations hereunder by a combination of commercial insurance, formal risk pooling under the statutory provisions of the State, and/or a self-funded loss reserve in whatever proportions are deemed appropriate by the Participating County. The Participating County shall furnish the Agencies with a certificate or other written evidence of the Participating County's election to provide or cause to be provided all or part of its coverage under a risk pooling, risk retention, or self-insurance program or any combination thereof.

(b) Insurance Obligations of the [ENTER "Department" OR "BSCC"]. If the insurance required in (a)(i) expires in accordance with its terms prior to execution of the Facility Sublease, the [ENTER "Department" OR "BSCC"] shall, at its own cost and expense, procure and maintain or cause to be procured and maintained (i) property casualty insurance in an amount equal to one hundred percent (100%) of the then current replacement cost of the Project, excluding the replacement cost of the unimproved real property constituting the Site (except that such insurance may be subject to a deductible clause not to exceed [five hundred thousand dollars (\$500,000) or two million five hundred thousand dollars (\$2,500,000)] for any one loss), and (ii) earthquake insurance (if such insurance is available on the open market from reputable

insurance companies at a reasonable cost) on any structure comprising part of the Project in an amount equal to the full insurable value of such structure or the amount of the attributable portion of the Interim Financing, whichever is less (except that such insurance may be subject to a deductible clause not to exceed [five hundred thousand dollars (\$500,000) or two million five hundred thousand dollars (\$2,500,000)] for any one loss). The extended coverage endorsement shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, vandalism and malicious mischief and such other hazards as are normally covered by such endorsement. The property casualty insurance shall be in a form satisfactory and with carriers which are acceptable to the Board.

(c) Disposition of Insurance Proceeds. The Participating County agrees and acknowledges that the Board, in its sole discretion, may elect to use the proceeds of insurance procured pursuant to this Agreement to repay the Interim Loan and related costs. However, in the event of (i) damage or destruction of the Project caused by the perils covered by the insurance procured pursuant to this Agreement and (ii) if the Board elects to repay the Interim Loan and related costs, and (iii) if any insurance proceeds remain after the Interim Loan and related costs have been repaid, and (iv) such remaining insurance proceeds are distributed to the [ENTER "Department" OR "BSCC"], then the [ENTER "Department" OR "BSCC"] agrees to distribute such remaining proceeds to the Participating County.

ARTICLE 6

CERTAIN OBLIGATIONS POST PROJECT COMPLETION

6.1 Private Use of the Project.

6.1.1 *Provision of Information Regarding Private Use.* The Participating County acknowledges that under the terms of the Facility Sublease, a form of which is attached hereto as **Exhibit D**, the Participating County will covenant to provide updated information to the Board, the [ENTER "Department" OR "BSCC"] and the State Treasurer annually regarding private use, if any, of the Project.

6.1.2 *Restriction on Private Use of Bond Financed Project.* The Participating County acknowledges that under the terms of the Facility Sublease, a form of which is attached hereto as **Exhibit D**, the Participating County will covenant to restrict private use of the Project as required by the terms thereof.

6.2 No Liens. The Participating County acknowledges that except as permitted under the terms of the Facility Sublease, a form of which is attached hereto as **Exhibit D**, the Participating County will covenant not to allow any liens on the Facility.

ARTICLE 7

RECORD RETENTION

7.1 Establishment of Official Project File. The Participating County shall establish an official file for the Project (the "Official Project File"). The file shall contain adequate documentation of all actions that have been taken with respect to the Project, in accordance with

generally accepted government accounting principles and the requirements for record retention for capital projects constructed with the proceeds of tax exempt bonds. The Participating County will provide a copy of such file to the [ENTER "Department" OR "BSCC"] upon termination of this Agreement. The documents to be retained shall include, but is not limited to contracts, payment of invoices, transfer of funds and other related accounting records.

7.2 Preservation of Records. The Participating County agrees to protect records adequately from fire or other damage. When records are stored away from the Participating County's principal office, a written index of the location of records stored must be on hand and ready access must be assured. All the Participating County records contained in the Official Project File must be preserved for a minimum of three years after the last date on which no Bonds are outstanding. These records shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the Agencies or designees, by state government auditors or designees, or by federal government auditors or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the relevant time period set forth in the third sentence of this paragraph, the related records must be retained until the completion of the action and resolution of all issues which arise from it if such date is later than the end of the afore-mentioned three-year period.

ARTICLE 8

MISCELLANEOUS

8.1 Entire Agreement. This Agreement constitutes and contains the entire agreement between the Parties hereto with respect to the transactions contemplated hereby and supersedes any prior oral or written understanding or agreement of the Parties with respect to the transactions contemplated hereby.

8.2 Amendment. The Parties may, by mutual agreement in writing, amend this Agreement in any respect.

8.3 Waiver. The Parties hereto may, from time to time, waive any of their rights under this Agreement unless such waiver is contrary to law, provided that any such waiver shall be in writing and signed by the Party making such waiver.

8.4 Counterparts. This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one Party, but all of which when taken together shall constitute one and the same instrument, notwithstanding that all Parties have not signed the same counterpart hereof.

8.5 Headings. The article and section headings contained in this Agreement are inserted as a matter of convenience and shall not affect in any way the construction or terms of this Agreement.

8.6 Further Assurances. Each of the Parties shall execute such other instruments, documents and other papers and shall take such further actions as may be reasonably required or desirable to carry out the provisions hereof and to consummate the transactions contemplated

hereby.

8.7 Survival. The representations, warranties, covenants and agreements made herein or in any certificate or document executed in connection herewith shall survive the execution and delivery hereof or thereof, as the case may be, and all statements contained in any certificate or document delivered by any Party hereto shall be deemed to constitute a representation and warranty made herein by such Party.

8.8 Governing Law. The laws of the State shall govern this Agreement, the interpretation thereof and any right or liability arising hereunder. Any action or proceeding to enforce or interpret any provision of this Agreement shall be brought, commenced or prosecuted in the courts of the State located in the County of Sacramento. All parties expressly assert that Sacramento County is not a forum inconvenience.

8.9 Compliance with Laws. At all times during the performance of this Agreement by the Parties, they shall strictly comply with all applicable governmental, administrative and judicial laws, ordinances, rules, regulations, orders, covenants and findings, including, without limitation, all applicable environmental laws and regulations.

8.10 Partial Invalidity. If any provisions of this Agreement are found by any competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.

8.11 Notices. All notices and other official communications between the Parties shall be in writing and shall be given by hand delivery or by recognized overnight courier who maintains verification of delivery (deemed to be duly received on the date delivered), or by registered mail, postage prepaid, return receipt requested (deemed to be duly received five (5) days after such mailing) or by telecopy (deemed to be received on the date sent providing that the facsimile was properly addressed and disclosed the number of pages transmitted on its front sheet and that the transmission report produced indicates that each of the pages of the facsimile was received at the correct facsimile number) to each of the respective Parties as follows:

If to the Board: State Public Works Board
915 L. St., 9th Floor
Sacramento, CA 95814
Attention: Executive Director
Facsimile: 916-449-5739

[If to the Department: California Department of Corrections and Rehabilitation
9838 Old Placerville Road, Suite B
Sacramento, CA 95827
Attention: Deputy Director, Facility Planning, Construction and
Management
Facsimile: 916-322-5717]

If to the BSCC: Board of State and Community Corrections
600 Bercut Dr.
Sacramento, CA 95811
Attention: Executive Director
Facsimile: 916-327-3317

If to the Participating County: County of [ENTER COUNTY NAME]
[ENTER STREET ADDRESS]
[ENTER CITY, STATE AND ZIP CODE]
Attention: [ENTER POSITION TITLE]
Facsimile: [ENTER FAX NUMBER]

or to such other address or number for any of the Parties hereto as may from time to time be designated by notice given by such Party to the other Parties in the manner hereinabove provided.

8.12 Force Majeure. None of the Parties shall be liable or responsible for any delay or failure resulting from (and the times for performance by the Parties hereunder shall be extended by the duration of) causes beyond the control of, and without the fault or negligence of, such Party, including without limitation acts of God, acts of the public enemy, acts of war or terrorism, acts of the government or governmental or quasi-governmental agency or instrumentality, significant market disruptions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, civil commotion, casualties, embargoes, severe or inclement weather beyond that usually encountered in [ENTER COUNTY NAME] County, California, shortages in labor or materials, or similar cause.

8.13 Exculpation. Notwithstanding anything to the contrary contained in this Agreement, in any Bond Document, Project Document or other certificate, agreement, document or instrument executed in connection with the [ENTER PROGRAM NAME] Financing Program, the liability of the Board hereunder shall be limited to and satisfied solely out of proceeds of the Interim Loan, if any, or the Bonds, if any, permitted to be used for such purpose. Except as provided above, the Participating County shall not have the right to obtain payment from the Agencies or from any other assets of the Agencies. The Participating County shall not enforce the liability and obligation of the Agencies to perform and observe the obligations contained in this Agreement, or any other documents delivered in connection herewith in any action or proceeding wherein a money judgment in excess of the available proceeds of the foregoing sources shall be sought against the Agencies.

8.14 Benefits of this Agreement Limited to the Parties. Except for the Parties to this Agreement, nothing contained in this Agreement, expressed or implied, is intended to give to any person (including without limitation the owners of the Bonds) any right, remedy or claim under or by reason hereof. Any agreement or covenant required herein to be performed by or on behalf of any Party shall be for the sole and exclusive benefit of the other Parties to this Agreement.

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement, either individually or by an authorized representative, on the day and year first set forth above.

STATE PUBLIC WORKS BOARD OF
THE STATE OF CALIFORNIA

By: _____
[Name]
[Executive Director or Deputy Director]

[DEPARTMENT OF CORRECTIONS AND
REHABILITATION OF THE STATE OF
CALIFORNIA]

By: _____
[Name]
[Title]

BOARD OF STATE AND COMMUNITY
CORRECTIONS OF THE STATE OF
CALIFORNIA

By: _____
[Name]
[Title]

COUNTY OF [COUNTY NAME]

By: _____
[Name]
[Title]

EXHIBIT A

PROJECT SCOPE, COST AND SCHEDULE DESCRIPTION;TC AL 0
"000000000001"}

[Include narrative description of Project per Section 4.1]

FORM OF DOCUMENT

EXHIBIT B

FORM OF GROUND LEASE{TC \L 0 "000000000001"}

FORM OF DOCUMENT

EXHIBIT C

FORM OF RIGHT OF ENTRY FOR CONSTRUCTION AND OPERATION TC AL 0
"0000000000001"1

FORM OF DOCUMENT

EXHIBIT D

FORM OF FACILITY SUBLEASE{TC \L 0 "0000000000001"}
}

FORM OF DOCUMENT

EXHIBIT E-1

DESCRIPTION OF PARTICIPATING COUNTY FUNDING {TC \L 0 "000000000001"}

Cash Contribution

**CERTIFICATE OF THE COUNTY OF [ENTER COUNTY NAME] REGARDING ITS
CASH (HARD) MATCH FOR THE [ENTER COUNTY NAME] COUNTY JAIL
PROJECT**

All capitalized terms not otherwise defined herein shall have the meaning given them in the Project Delivery and Construction Agreement.

WHEREAS, pursuant to [ENTER STATUTE] (the "Law"), the State Public Works Board (the "Board") is authorized to finance the acquisition, design and construction of a [ENTER TYPE OF FACILITY] facility approved by the Board of State and Community Corrections (the "BSCC") pursuant to Section [ENTER SECTION] of the California Government Code (the "[ENTER PROGRAM NAME] Financing Program"); and

WHEREAS, pursuant to California Code of Regulations Title 15, Division 1, Chapter 1, Subchapter [ENTER SUBCHAPTER], only the cost of certain design and construction activities are potentially eligible for reimbursement under the [ENTER PROGRAM NAME] Financing Program – acquisition, pre-design and other specified design and construction costs are not eligible; and

WHEREAS, the County of [ENTER COUNTY NAME] (the "Participating County") has proposed to build a [ENTER TYPE OF FACILITY] facility, the [ENTER PROJECT NAME] project, (the "Project"), to be located at [ENTER PHYSICAL ADDRESS], real property controlled by the Participating County through fee-simple ownership (the "Site"); and

WHEREAS, pursuant to the Law, the Participating County is paying a portion of the costs of the Project (the "Cash (hard) Match") as described in Exhibit 1; and

WHEREAS, the Board intends to assist in the oversight and financing of the Project, subject to satisfaction of certain conditions and requirements of the Board, and the Board may in its sole, reasonable discretion, issue lease revenue bonds for the Project (the "Bonds"); and

WHEREAS, the interests of both the Board and the Participating County require confirmation of certain facts and certain assurances concerning the Cash (hard) Match.

NOW, THEREFORE, the Participating County, acting through its duly authorized representative, does hereby represent, warrant and covenant as follows:

(A) Lawfully Available Funds. The Cash (hard) Match, as described in Exhibit 1, has been derived exclusively from lawfully available funds of the Participating County.

(B) Cash (hard) Match Is Legal and Authorized. The payment of the Cash (hard) Match for the Project (i) is within the power, legal right, and authority of the Participating County; (ii) is legal and will not conflict with or constitute on the part of the Participating County a material violation of, a material breach of, a material default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance upon any property of the Participating County under the provisions of any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, installment sale agreement, contract, or other material agreement or instrument to which the Participating County is a party or by which the Participating County or its properties or funds are otherwise subject or bound, decree, or demand of any court or governmental agency or body having jurisdiction over the Participating County or any of its activities, properties or funds; and (iii) have been duly authorized by all necessary and appropriate action on the part of the governing body of the Participating County. The authorized representative of the Participating County executing this Certificate is fully authorized and empowered to take such actions for and on behalf of the Participating County.

(C) Governmental Consents. The execution, delivery, and performance by the Participating County of this certificate and the use of the Cash (hard) Match for certain costs of the Project do not require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority other than the Participating County in connection with the execution, delivery, and performance of this Certificate, the consummation of any transaction herein contemplated, or the offer, issue, sale, or delivery of the Bonds, except as shall have been obtained or made and as are now in full force and effect.

(D) No Prior Pledge. The Cash (hard) Match and the Project are not and will not be mortgaged, pledged, or hypothecated by the Participating County in any manner or for any purpose and have not been and will not be the subject of a grant of a security interest by the Participating County. In addition, the Cash (hard) Match and the Project are not and will not be mortgaged, pledged, or hypothecated for the benefit of the Participating County or its creditors in any manner or for any purpose and have not been and will not be the subject of a grant of a security interest in favor of the Participating County or its creditors. The Participating County shall not in any manner impair, impede or challenge the security, rights and benefits of the owners of the Bonds or the trustee for the Bonds.

IN WITNESS WHEREOF, the undersigned duly authorized representative of the Participating County has executed and delivered this Certificate to the Board on the date set forth below.

Date: [ENTER DATE FROM PDCA COVER PAGE]

COUNTY OF [ENTER COUNTY NAME]

By: _____

[NAME]
[TITLE]

Exhibit 1-Description of Cash (hard) Match

[ENTER COUNTY NAME] County's Cash (hard) Match for the Project will be funded from [ENTER NUMBER OF SOURCES] sources: (1) _____, (2) _____, and (3) _____.

FORM OF DOCUMENT

**CERTIFICATE OF THE COUNTY OF [ENTER COUNTY NAME] REGARDING ITS
OTHER PARTICIPATING COUNTY FUNDING FOR THE [ENTER COUNTY NAME]
COUNTY JAIL PROJECT**

All capitalized terms not otherwise defined herein shall have the meaning given them in the Project Delivery and Construction Agreement.

WHEREAS, pursuant to [ENTER STATUTE] (the "Law"), the State Public Works Board (the "Board") is authorized to finance the acquisition, design and construction of a [ENTER TYPE OF FACILITY] facility approved by the Board of State and Community Corrections (the "BSCC") pursuant to Section [ENTER SECTION] of the California Government Code (the "[ENTER PROGRAM NAME] Financing Program"); and

WHEREAS, pursuant to California Code of Regulations Title 15, Division 1, Chapter 1, Subchapter [ENTER SUBCHAPTER], only the cost of certain design and construction activities are potentially eligible for reimbursement under the [ENTER PROGRAM NAME] Financing Program – acquisition, pre-design and other specified design and construction costs are not eligible; and

WHEREAS, the County of [ENTER COUNTY NAME] (the "Participating County") has proposed to build a [ENTER TYPE OF FACILITY] facility, the [ENTER PROJECT NAME] project, (the "Project"), to be located at [ENTER PHYSICAL ADDRESS], real property controlled by the Participating County through fee-simple ownership (the "Site"); and

WHEREAS, pursuant to the Law, the Participating County is contributing funding in addition to its Cash (hard) Match and In-Kind (soft) Match (the "Other Participating County Funding"); and

WHEREAS, the Board intends to assist in the oversight and financing of the Project, subject to satisfaction of certain conditions and requirements of the Board, and the Board may in its sole, reasonable discretion, issue lease revenue bonds for the Project (the "Bonds"); and

WHEREAS, the interests of both the Board and the Participating County require confirmation of certain facts and certain assurances concerning the Other Participating County Funding.

NOW, THEREFORE, the Participating County, acting through its duly authorized representative, does hereby represent, warrant and covenant as follows:

(A) Lawfully Available Funds. The Other Participating County Funding, as described in Exhibit 1, has been derived exclusively from lawfully available funds of the Participating County.

(B) Other Participating County Funding Is Legal and Authorized. The payment of the Other Participating County Funding for the Project (i) is within the power, legal right, and authority of the Participating County; (ii) is legal and will not conflict with or constitute on the part of the Participating County a material violation of, a material breach of, a material default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance upon any property of the Participating County under the provisions of any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, installment sale agreement, contract, or other material

agreement or instrument to which the Participating County is a party or by which the Participating County or its properties or funds are otherwise subject or bound, decree, or demand of any court or governmental agency or body having jurisdiction over the Participating County or any of its activities, properties or funds; and (iii) have been duly authorized by all necessary and appropriate action on the part of the governing body of the Participating County. The authorized representative of the Participating County executing this Certificate is fully authorized and empowered to take such actions for and on behalf of the Participating County.

(C) Governmental Consents. The execution, delivery, and performance by the Participating County of this certificate and the use of the Other Participating County Funding for certain costs of the Project do not require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority other than the Participating County in connection with the execution, delivery, and performance of this Certificate, the consummation of any transaction herein contemplated, or the offer, issue, sale, or delivery of the Bonds, except as shall have been obtained or made and as are now in full force and effect.

(D) No Prior Pledge. The Other Participating County Funding and the Project are not and will not be mortgaged, pledged, or hypothecated by the Participating County in any manner or for any purpose and have not been and will not be the subject of a grant of a security interest by the Participating County. In addition, the Other Participating County Funding and the Project are not and will not be mortgaged, pledged, or hypothecated for the benefit of the Participating County or its creditors in any manner or for any purpose and have not been and will not be the subject of a grant of a security interest in favor of the Participating County or its creditors. The Participating County shall not in any manner impair, impede or challenge the security, rights and benefits of the owners of the Bonds or the trustee for the Bonds.

IN WITNESS WHEREOF, the undersigned duly authorized representative of the Participating County has executed and delivered this Certificate to the Board on the date set forth below.

Date: [ENTER DATE FROM PDCA COVER PAGE]

COUNTY OF [ENTER COUNTY NAME]

By: _____
[NAME]
[TITLE]

Exhibit 1-Description of Other Participating County Funding

[ENTER COUNTY NAME] County's Other Participating County Funding for the Project will be funded from [ENTER NUMBER OF SOURCES] sources: (1) _____, (2) _____, and (3) _____.

FORM OF DOCUMENT

EXHIBIT E-2

DESCRIPTION OF PARTICIPATING COUNTY FUNDING {TC AL 0 "0000000000001"}

In-kind (soft) Match

[DESCRIPTION TO BE INSERTED]

FORM OF DOCUMENT

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
)
)
)
)
)
Attention:)

[Space above for Recorder's use]

GROUND LEASE

by and between the

[ENTER COUNTY NAME]
as Landlord,

and

["DEPARTMENT OF CORRECTIONS AND REHABILITATION" OR "BOARD OF STATE
AND COMMUNITY CORRECTIONS"]
OF THE STATE OF CALIFORNIA,
as Tenant

Dated as of _____, 20__

(FOR A [ENTER TYPE OF FACILITY] FACILITY
LOCATED IN THE COUNTY OF [ENTER COUNTY NAME])

NO DOCUMENTARY TRANSFER TAX DUE. This Ground Lease is recorded for the benefit of the State of California and is exempt from California transfer tax pursuant to Section 11928 of the California Revenue and Taxation code and from recording fees pursuant to Sections 6103 and 27383 of the California Government Code

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FORM OF DOCUMENT

GROUND LEASE

THIS GROUND LEASE, dated as of _____, 20__ for reference only (this "Ground Lease"), is entered into by and between COUNTY OF [ENTER COUNTY NAME] (the "Participating County"), a Political Subdivision of the State of California (the "State"), as Landlord, and the [“DEPARTMENT OF CORRECTIONS AND REHABILITATION” OR “BOARD OF STATE AND COMMUNITY CORRECTIONS”] OF THE STATE OF CALIFORNIA (the "Department"), an entity of state government of the State, as Tenant. The Participating County and the Department are sometimes referred to collectively as the "Parties", and individually as a "Party".

RECITALS

WHEREAS, pursuant to [ENTER STATUTE], the State Public Works Board (the "Board") is authorized to finance the acquisition, design and construction of a jail facility approved by the Board of State and Community Corrections (the "BSCC") pursuant to Section [ENTER SECTION] and following, as amended, (the "[ENTER PROGRAM NAME] Financing Program"), the Participating County, [the Department, BSCC and the Board entered into the Project Delivery and Construction Agreement (the "PDCA") dated as of _____, 20__, for reference only; and

WHEREAS, further to the PDCA, the Participating County has proposed to build a [ENTER TYPE OF FACILITY] facility as more particularly described in Exhibit A attached hereto (the "Project"), to be located on real property owned in fee simple by the Participating County and legally described in Exhibit B attached hereto (the "Site"); and

WHEREAS, further to the PDCA, the Department desires to ground lease the Site from the Participating County to assist the Participating County in obtaining eligibility for the Board lease revenue bond financing to finance a portion of the construction of the Project (the "Bonds"); and

WHEREAS, the Department and the Board desire that the term of this Ground Lease not terminate or expire until the Bonds have been paid in full or retired under the provisions of the Bond Documents; and

WHEREAS, the Participating County is desirous of maintaining its eligibility to receive financing for the Project, and to achieve this end, the Participating County is willing to lease the Site to the Department; and

WHEREAS, concurrently with the execution of this Ground Lease, the Department as the Licensor and the Participating County as the Licensee, have entered into a Right of Entry for Construction and Operation (the "Right of Entry") in substantially the form attached as Exhibit C to the PDCA, authorizing the Participating County to enter the Site for the purpose of constructing the Project and for operation of the Project upon substantial completion of construction; and

WHEREAS, if the Participating County maintains its eligibility in the [ENTER PROGRAM NAME] Financing Program, and the Board in its sole discretion, is able to issue the

Bonds to finance the Project in its typical and customary manner, the Department will concurrently sublease the Site to the Board, (the "Site Lease"), and enter into a Facility Lease (the "Facility Lease") providing for the Board to sublease to the Department the Site and the Project (together the "Facility"). The Site Lease and the Facility Lease will provide security for the Bonds to be issued by the Board under an indenture (the "Indenture") between the Board and the Treasurer of the State, as trustee (the "State Treasurer"); and

WHEREAS, if the Board is able to issue the Bonds for the Project in its typical and customary manner, concurrently with executing the Site Lease and the Facility Lease, the Department and the Participating County intend to enter into a Facility Sublease (the "Facility Sublease") whereby the Department will sublet the Facility to the Participating County pursuant to the terms of the Facility Sublease; and

NOW, THEREFORE, in consideration of the mutual obligations of the Parties hereto, the Participating County hereby leases to the Department, and the Department hereby leases from the Participating County, the Site subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which the Participating County and the Department hereby mutually agree.

SECTION 1. Definitions.

As used herein, the following terms shall have the following meanings:

- (a) "[ENTER PROGRAM NAME] Financing Program" has the meaning given to such term in the Recitals.
- (b) "Abatement Event" shall have the meaning given to such term in the Facility Lease.
- (c) "Board" means the State Public Works Board of the State of California, an entity of state government of the State.
- (d) "Bond Documents" mean each and every document evidencing the Bonds, including, but not limited to, the Site Lease, the Facility Lease, the Facility Sublease, and the Indenture.
- (e) "Bonds" has the meaning given to such term in the Recitals.
- (f) "BSCC" has the meaning given to such term in the Recitals.
- (g) "Claims" has the meaning given to such term in Section 23 of this Ground Lease.
- (h) "Department" has the meaning given to such term in the preamble.
- (i) "DGS" means the Department of General Services of the State of California, an entity of state government of the State.

(j) “Easements” mean the access, utilities and repairs easements described in Subsection 4(b) of this Ground Lease.

(k) “Easement Agreement” means an easement agreement memorializing the grant of Easements by the Participating County, as grantor, to the Department, as grantee, in the form of Exhibit C attached hereto.

(l) “Easement Property” means real property owned by the Participating County that is burdened by the Easement Agreement as described in Exhibit 2 to the Easement Agreement.

(m) “Effective Date” means the date this Ground Lease is valid, binding and effective as provided in Section 2 of this Ground Lease.

(n) “Facility” has the meaning given to such term in the Recitals.

(o) “Facility Lease” has the meaning given to such term in the Recitals.

(p) “Facility Sublease” has the meaning given to such term in the Recitals.

(q) “Ground Lease” has the meaning given to such term in the preamble, including all exhibits attached hereto.

(r) “Hazardous Materials” mean any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Talmer Hazardous Substance Account Act), (iii) defined as a “hazardous material”, “hazardous substance”, or “hazardous waste” under Section 25501 of the California Health and Safety Code.

(s) “Improvements” mean the physical construction of the Project and other buildings, improvements, structures, furnishings and equipment placed in, under or upon the Site by the Participating County under the terms and conditions in the Right of Entry or this Ground Lease.

(t) “Indemnitees” has the meaning given to such term in Section 24 of this Ground Lease.

(u) “Indenture” has the meaning given to such term in the Recitals.

(v) “Landlord” has the meaning given to such term in the preamble.

(w) “Leasehold Estate” means the real property right and interest held by the Department as Tenant to possess, use and access the Site and the Project under the terms and conditions of this Ground Lease.

- (x) "Participating County" has the meaning given to such term in the preamble.
- (y) "Parties" has the meaning given to such term in the preamble.
- (z) "Party" has the meaning given to such term in the preamble.
- (aa) "PDCA" has the meaning given to such term in the Recitals.
- (bb) "Permitted Encumbrances" has the meaning given to such term in Subsection 3(b)(4) of this Ground Lease.
- (cc) "Project" means the buildings, structures, works and related improvements constructed or to be constructed on the Site, as are more particularly described in Exhibit A attached hereto, and any and all additions, betterments, extensions and improvements thereto.
- (dd) "Resolution" has the meaning given to such term in Subsection 3(b)(1) of this Ground Lease.
- (ee) "Right of Entry" has the meaning given to such term in the Recitals.
- (ff) "Right of First Offer" has the meaning given to such term in Section 13 of this Ground Lease.
- (gg) "Site" has the meaning given to such term in the Recitals.
- (hh) "Site Lease" has the meaning given to such term in the Recitals.
- (ii) "State" means the state government of the State of California.
- (jj) "State Treasurer" has the meaning given to such term in the Recitals.
- (kk) "Tenant" has the meaning given to such term in the preamble.
- (ll) "Term" has the meaning given to such term in Section 10 of this Ground Lease.

SECTION 2. Effective Date.

The Parties hereby confirm and agree that this Ground Lease is effective and binding on the Parties upon the first day (the "Effective Date") on which this Ground Lease has been consented to by the Board and a duly authorized representative of the Board has consented to this Ground Lease by executing it below.

SECTION 3. Representations, Warranties and Covenants.

(a) Representations and Warranties of the Department. In addition to any express agreements of Tenant herein, the Department makes the following representations and warranties to the Participating County as of the Effective Date:

(1) The Department has full legal right, power and authority to enter into this Ground Lease as Tenant and to carry out and consummate all transactions contemplated by this Ground Lease and by proper action has duly authorized the execution and delivery of this Ground Lease. The Department shall cause an opinion, dated as of [the date in the preamble of this Ground Lease] and in substantially the form of Exhibit D attached to this Ground Lease, to be delivered to the Board contemporaneously with the Department's execution of this Ground Lease;

(2) The officers of the Department executing this Ground Lease are duly and properly holding their respective offices and are fully authorized to execute this Ground Lease; and

(3) This Ground Lease has been duly authorized, executed and delivered by the Department, and will constitute a legal, valid and binding agreement of the Department, enforceable against the Department in accordance with its terms on the Effective Date.

(b) Representations, Warranties and Covenants of the Participating County. In addition to any express agreements of Landlord herein, the Participating County makes the following representations, warranties and covenants to the Department as of the Effective Date:

(1) The Participating County, by Resolution of the Board of Supervisors ("Resolution"), has full legal right, power and authority to enter into this Ground Lease as Landlord, to transfer and convey the Leasehold Estate to the Department under this Ground Lease, and to carry out and consummate all transactions contemplated by this Ground Lease and by proper action has duly authorized the execution and delivery of this Ground Lease. The Participating County shall cause an opinion, dated as of [the date in the preamble of this Ground Lease] and in substantially the form of Exhibit D attached to this Ground Lease, to be delivered to the Board contemporaneously with the Participating County's execution of this Ground Lease.

(2) The officers of Participating County executing this Ground Lease are duly and properly holding their respective offices and have the legal power, right and are fully authorized to execute this Ground Lease pursuant to the Resolution.

(3) This Ground Lease has been duly authorized, executed and delivered by Participating County, and will constitute a legal, valid and binding agreement of Participating County, enforceable against the Participating County in accordance with its terms upon the Effective Date.

(4) The Participating County is the owner in fee simple of the Site and has marketable and insurable fee simple title to the Site, there is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Site or pending against the Participating County which could affect the Participating County's title to the Site, affect the value of the Site, or subject an owner of the Site to liability and there are no outstanding mortgages, deeds of trust, bond indebtedness, leaseholds, pledges, conditions or restrictions, liens or encumbrances against the Site except as identified in Exhibit E, attached hereto, collectively, the "Permitted Encumbrances".

(5) No consent, permission, authorization, order, license, or registration with any governmental authority is necessary in connection with the execution and delivery of this Ground Lease, except as have been obtained.

(6) There exists no litigation or other proceeding pending or threatened against the Participating County except as identified in Exhibit F, attached hereto, that, if determined adversely, would materially and adversely affect the ability of the Participating County to perform its obligations under this Ground Lease.

(7) This Ground Lease is, and all other instruments, documents, exhibits, and agreements required to be executed and delivered by the Participating County in connection with this Ground Lease are and shall be, duly authorized, executed and delivered by the Participating County and shall be valid, legally binding obligations of and enforceable against the Participating County in accordance with their terms.

(8) Neither the execution and delivery of this Ground Lease and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Ground Lease and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any agreements or instruments to which the Participating County is a party or affecting the Site.

(9) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against the Participating County.

(10) There are no and have been no:

(A) actual or pending public improvements which will result in the creation of any liens, encumbrances or assessments upon the Site, including public assessments or mechanics liens, other than the Permitted Encumbrances, and the Participating County agrees to indemnify, defend and hold the Department free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys' fees arising from any liens, encumbrances or assessments that have been, or may be, imposed upon the Site as a consequence of actual or impending public improvements at or after the Effective Date, including any obligations to pay a fee or assessment for infrastructure to the extent such liability survives or continues at or after the Effective Date, and the Department agrees to cooperate with the Participating County, at the Participating County's costs and to the extent permitted by law, with respect to the Participating County's efforts to remove any such liens, fees, assessments, or encumbrances.

(B) uncured notices from any governmental agency notifying the Participating County of any violations of law, ordinance, rule, or regulation, including Environmental Laws, occurring on the Site.

(C) notices of any condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would detrimentally affect the use, operation or value of the Site.

(11) The Participating County hereby agrees that it will not enter into any new leases or any other obligations or agreements that will affect the Site at or after the Effective Date, without the express prior written consent of the Department and approval of the Board.

(12) The Participating County will not subject the Site to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the Effective Date without the express prior written consent of the Department and the approval of the Board.

(13) The Participating County shall promptly notify the Department of any event or circumstance that makes any representation or warranty of the Participating County under this Ground Lease untrue or misleading, or of any covenant of the Participating County under this Ground Lease incapable or less likely of being performed. The Participating County's obligation to provide the notice described in the preceding sentence to the Department shall in no way relieve the Participating County of any liability for a breach by the Participating County of any of its representations, warranties or covenants under this Ground Lease.

(14) The Department shall at all times during the Term have access to and from the Site.

(15) No representation, warranty or statement of the Participating County in this Ground Lease or in any document, certificate, exhibit or schedule furnished or to be furnished to the Department pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

SECTION 4. Lease of the Site, Access, Utilities and Repairs Easements and Recordation of Lease.

(a) Lease of the Site and Recordation of Ground Lease. The Participating County hereby leases the Site to the Department and the Department leases the Site from the Participating County. The Participating County further agrees to provide, or cause to be provided, to the Department and its assigns or sublessees, adequate parking spaces at no cost, and such utility services as the Participating County customarily provides or causes to be provided to facilities similar to the Project, including without limitation electricity, gas, water, sewer, garbage disposal, heating, air conditioning and telephone. The Department and the Board shall have the right to record this Ground Lease in the Official Records of the Participating County as of the Effective Date or anytime thereafter.

[Use Note: Section 4(b) and the Easement Agreement are necessary if Site access and utilities are provided by other real property. The execution form of the Easement Agreement is attached as Exhibit C.]

(b) Access, Utilities and Repairs Easement. As of the Effective Date, the Participating County agrees to grant to the Department, for the use, benefit and enjoyment of the Department and its lessees, successors and assigns, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public using or

visiting the Site or the Project, a non-exclusive easement over, across and under the Easement Property for the purpose of: a) ingress, egress, passage or access to and from the Site by pedestrian or vehicular traffic; b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and c) other purposes and uses necessary or desirable for access to and from the Site for the repair, operation and maintenance of the Facility (collectively the "Easements"). The grant of the Easements shall be memorialized in that certain Easement Agreement for Grants of Access, Utilities and Repairs (the "Easement Agreement") in substantially the form of Exhibit C attached to this Ground Lease. The Department and the Board shall have the right to record the Easement Agreement in the Official Records of the Participating County as of the Effective Date or anytime thereafter. The Easements to be granted by the Participating County are subject to the limitations set forth in the Easement Agreement. In the event of a conflict or ambiguity, with respect to the terms of the Easements, between this Ground Lease and the Easement Agreement, the terms of the Easement Agreement shall control.

SECTION 5. Landlord Right of Entry for Construction and Operation.

(a) Landlord Right of Entry for Construction and Operation. Notwithstanding anything to the contrary contained herein, Landlord has reserved the right to enter and use the Site for construction of the Project pursuant to the terms and conditions in the Right of Entry.

(b) Quiet Enjoyment. The Participating County covenants that the Department, its assigns or sublessees, may quietly have, hold, and enjoy all of the Site and the Improvements during the Term of this Ground Lease and any extended term hereof, without hindrance or interruption by the Participating County or by any other person or persons lawfully or equitably claiming by, through or under the Participating County, except as limited by the Permitted Encumbrances.

SECTION 6. Purpose and Use.

The Parties reasonably expect for the Site to be used by the Department, and each of its assignees or sublessees during the Term of this Ground Lease, for the purpose of causing the construction, operation and maintenance of the Project and appurtenances thereto; provided however, the Parties acknowledge that the Site may be utilized for other types of correctional housing or other public purposes as may be required to exercise the Board's obligations, rights and remedies under the Bond Documents.

The Participating County acknowledges and confirms that the Department's use of the Leasehold Estate created hereunder includes, but is not limited to, allowing for potential financing and construction of the Project and the leasing of the Site and/or the Facility pursuant to the Site Lease, the Facility Lease, and the Facility Sublease and for such other purposes as may be incidental thereto. The Participating County further acknowledges and confirms the Board's right to relet the Facility in the event of a default under the Facility Lease and to provide for all other rights and remedies of the Board, the State Treasurer, and the owners of the Bonds in the event of a default under the Bond Documents.

SECTION 7. Assignment or Sublease.

The Department may sublet or assign all or a portion of the Site or the Project or assign

this Ground Lease or any interest therein, without the prior consent or approval of the Participating County; provided, however, any sublet or assignment shall be subject to the prior approval of the Board and Participating County is provided notice of said sublet or assignment. Notwithstanding that the Participating County's consent or approval is not required for any subletting of the Site or the Project, to assist with the Board's financing of the Project, the Participating County hereby consents to and approves the sublease of the Site, together with the Improvements, to the Board under the Site Lease and the further subletting of the Facility by the Board to the Department under the Facility Lease.

SECTION 8. No Commitment to Issue the Bonds and Non-Liability of the Department and the State.

The delivery of this Ground Lease shall not directly, indirectly or contingently, obligate the Department, the Board or any other subdivision of the State to issue the Bonds or levy any form of taxation or to make any appropriation with respect to the Project. Any obligation of the Department created by or arising out of this Ground Lease shall not impose a debt or pecuniary liability upon the Department, the Board or any other subdivision of the State, or a charge upon the general credit or taxing powers thereof but shall be payable solely out of funds duly authorized and appropriated by the State.

SECTION 9. Cooperation.

The Participating County has a duty to fully cooperate and provide all necessary assistance to the Department and the Board to aid them in their efforts to finance the Project. The Participating County acknowledges that it is authorized and directed to provide cooperation concerning the issuance of the Bonds, including without limitation, executing and delivering such certificates, legal opinions or instruments as the Department or the Board may reasonably request. The Participating County's legal counsel, Chief Administrative Officer and its Sheriff are authorized and directed to cooperate in the issuance of the Bonds and to execute all documents reasonably needed to accomplish such financing.

SECTION 10. Term and Extension.

The Term of this Ground Lease shall commence on the Effective Date and shall co-terminate on the same date as the Facility Lease, unless such Term is extended by the parties thereto, or unless sooner terminated as provided herein, except no termination of this Ground Lease shall occur until all the Bonds and all other indebtedness incurred by the Board for the Project, if any, have been fully repaid.

SECTION 11. Rental.

The Department shall pay the Participating County rental in the sum of Ten Dollars (\$10.00) per year, all of which rental shall be deemed to have been prepaid to the Participating County by the Department on the Effective Date and, thereby acknowledges the Participating County's match funding requirement has been sufficiently met. The Participating County agrees that the payment of such rental is adequate consideration for the leasing of the Site, together with the Improvements, under this Ground Lease.

SECTION 12. Taxes and Assessment.

The Department shall pay or cause to be paid all lawful taxes that may be levied at any time upon any interest the Department may have under this Ground Lease (including both the Site and the Improvements after the Effective Date). The Participating County and the Department each represent and acknowledge that neither Party believes or expects that its respective interests in the Site are subject to payment of property taxes. The Department shall have the right to contest the validity of any levy or tax assessment levied upon the Department's interest in the Site.

SECTION 13. Right of First Offer and Priority of Ground Lease.

(a) Right of First Offer. Should the Participating County decide to sell the Site at any time during the Term of this Ground Lease, the Participating County shall notify the Department and the Board in writing of such intention prior to soliciting offers from any prospective purchasers. In such event, the Department and the Board shall have fifteen (15) months from receipt of such notification of intention to sell to inform the Participating County of the Department's interest in acquiring the Site. The Participating County understands that the State's acquisition process requires an appropriation of funds and the approval of the Board. The Participating County agrees to reasonably cooperate with the Department in obtaining such approval and in meeting any other State property acquisition requirements that may exist at that time. If the Department informs the Participating County of the Department's intention to acquire the Site within said fifteen (15) month period, the Parties agree to negotiate a purchase agreement in good faith and at a price that is the fair market value of the Site at the time the Department exercises its Right of First Offer.

(b) Priority of Ground Lease. If the Department and the Participating County are unable to agree on the terms and conditions for the purchase and sale of the Site, or if the Board does not approve the acquisition of the Site by the Department, the Participating County shall be free to market and sell the Site to a third party; provided, however, any new owner of the Site shall acquire the Site subject to this Ground Lease and any encumbrances related to the Bonds and the Bond Documents. The Department and the Board shall have no obligation to subordinate the Ground Lease, the Bonds or the Bond Documents to accommodate the new owner or lender(s).

SECTION 14. Damage or Destruction.

Damage or destruction to the Project shall not act to terminate or cancel this Ground Lease. In the event of any damage or destruction of the Project, the use of the proceeds of any property casualty or builder's risk insurance required to be procured and maintained pursuant to the PDCA, or any insurance required by the Facility Lease or Facility Sublease shall be governed by the terms of the agreement that required the procurement of such insurance.

SECTION 15. Insurance.

Except for insurance obligations that may arise as a result of the issuance of the Bonds by the Board, or as may be required by the PDCA, the Department shall have no obligation to purchase insurance for the Site or the Project, including but not limited to any general liability,

earthquake, flood, fire or extended casualty coverage.

SECTION 16. Condition and Title to the Improvements on Termination.

Upon termination or expiration of this Ground Lease, the Department shall have no obligation, to remove the Improvements. Title to the Improvements, including the Project, during the Term shall be vested in the State. Subject to the terms and conditions in the Bond Documents, at the termination or expiration of this Ground Lease, fee title to the Improvements, including the Project, shall vest in the Participating County and become the property of the Participating County without further action of any Party and without the necessity of a deed from the Department to the Participating County.

SECTION 17. The Department's Right to Terminate.

The Department, with the approval of the Board, shall have the right to terminate this Ground Lease upon thirty (30) days written notice to the Participating County without any liability; provided, however, no termination of this Ground Lease or revesting of title to any portion of the Site or vesting of title to the Project may occur until the Bonds have been fully paid or retired under the provisions of the Bond Documents.

SECTION 18. The Participating County's Right to Terminate

Participating County's proper exercise of its termination rights pursuant to Article 2, section 2.2(b) of the PDCA serves to terminate this Ground Lease effective on the date of termination of the PDCA.

SECTION 19. Non-Termination, Default and Damages.

This Ground Lease shall expire at the end of the Term. It is expressly agreed by the Parties to this Ground Lease that any default under this Ground Lease will not allow either Party to terminate or otherwise interfere with the Department's quiet enjoyment and beneficial use of the Site and the Project under this Ground Lease, the Site Lease or the Facility Lease. Until such time as the Bonds have been fully paid or retired under the provisions of the Bond Documents, the sole remedy of any Party upon such default shall be a suit for money damages or specific performance to remedy such a default.

SECTION 20. Waste and Hazardous Materials.

Neither the Participating County nor the Department shall knowingly commit, suffer or permit any waste or nuisance on the Site or any acts to be done thereon in violation of any laws or ordinances. To the Participating County's best knowledge, after having examined its documents, public records and other instruments and having made inquiry of appropriate departments and agencies with respect to the Site and, except as specifically provided in this Ground Lease, no Hazardous Materials, were used, generated, stored, released, discharged or disposed of on, under, in, or about the Site or transported to or from the Site. The Participating County represents with respect to the Site that neither the Participating County nor any other person or entity under the control of, or with the knowledge of the Participating County will cause or permit the use generation, storage, release, discharge, or disposal of any Hazardous