

Materials on, under, in, or about the Site or transported to or from the Site.

SECTION 21. Eminent Domain.

If the whole or any portion of the Site or the Project shall be taken in eminent domain proceedings, or by sale in lieu of such taking by a governmental entity threatening to use the power of eminent domain, and which taking in the collective judgment of the Department, the Board, and the State Treasurer renders the Site and/or the Project unsuitable for the continued use by the State, then this Ground Lease shall terminate when possession is taken by the condemning entity.

If this Ground Lease is terminated because of such taking and any of the Bonds are outstanding, then all proceeds from any permanent or temporary taking shall be used to repay any outstanding Bonds as provided in the Bond Documents, including any outstanding or accrued interest, and upon full repayment of the Bonds then the remaining proceeds, if any, shall be distributed to the Department and the Participating County according to their respective interests as provided in the Bond Documents. The Participating County and the Department shall each have the right to represent its own interest, at its own cost and expense, in any proceedings arising out of such taking, and each of the Participating County and the Department shall reasonably cooperate with the other, including without limitation, settling with the condemning authority only with the other Party's consent if such settlement would affect the other Party's rights.

If this Ground Lease is not terminated because of such taking, then it shall remain in full force and effect with respect to the remainder of the Site and the Project. The Participating County and the Department each waives the provisions of the California Code of Civil Procedure, Section 1265.130, or any similar law that permits a Party to petition a court to terminate this Ground Lease upon a taking affecting the Site or the Project, the Parties agreeing that any such termination rights shall be only as expressly set forth in this Ground Lease.

SECTION 22. Non-Discrimination.

During the performance of this Ground Lease, the Participating County shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. The Participating County shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

The Participating County shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter I, Part I, Division 3, Title 2 of the Government Code (Government Code, Sections 11135 - 11139.5), and the regulations or standards adopted to implement such article.

SECTION 23. Liens.

In the event the Department, the Board or their designees, at any time during the Term, causes any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Project or the Site, the Department, the Board or their designees shall pay, when due, all sums of money that may become due for any labor, services, materials, supplies or equipment furnished to or for the Department or the Board, upon or about the Project or the Site and which may be secured by any lien against the Project or the Site or the Department's or the Board's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or comes due; except that, if the Department or the Board desires to contest any such lien, it may do so. If any such lien is reduced to final judgment and such judgment or other process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed, said stay thereafter expires, the Department or the Board shall forthwith pay and discharge said judgment.

SECTION 24. Indemnification.

As required by Section [ENTER SECTION] of the California Government Code, the Participating County hereby agrees that it shall indemnify, protect, defend and hold harmless the State, including but not limited to, the Department, the Board, DGS, and each of their respective officers, governing members, directors, officials, employees, subcontractors, consultants and agents (collectively the "Indemnitees"), for any and all claims, liabilities and losses arising out of the use of the Site or the Project, including, but not limited to all demands, causes of action and liabilities of every kind and nature whatsoever arising out of, related to, or in connection with (a) any breach of this Ground Lease by the Participating County; (b) the construction, operation, maintenance, use and occupancy of the Project; (c) any acts or omissions of any contractor hired by the Participating County or its agents or subcontractor hired by such contractor (collectively the "Claims"). The Participating County's obligation to indemnify, defend, and save harmless the Indemnitees shall extend to all Claims arising, occurring, alleged, or made any time, including prior to, during, or after this Ground Lease is in full force and effect. The Participating County's obligation to indemnify, defend, and save harmless the Indemnitees shall apply regardless of any active and/or passive negligent act or omission of the Indemnitees, but the Participating County shall not be obligated to provide indemnity or defense for Indemnitees wherein the Claims arise out of the gross negligence or willful misconduct of the Indemnitees. The indemnification obligation of the Participating County set forth in this Section shall survive the expiration of the Term or earlier termination of this Ground Lease.

SECTION 25. Non-Encumbrance.

The Participating County covenants that the Facility is not and will not be mortgaged, pledged, or hypothecated in any manner or for any purpose and has not been and will not be the subject of a grant of a security interest by the Participating County without the written consent of the Department and the Board. The Participating County further covenants that it 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.

SECTION 26. Miscellaneous.

(a) Amendments. This Ground Lease may only be amended, changed, modified or

altered in writing by the Parties. As long as any of the Bonds are outstanding the Board must consent to any amendment hereto to be effective.

(b) Waiver. The waiver by any Party of a breach by the other Party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

(c) Law Governing. This Ground Lease shall be governed exclusively by the provisions hereof and by the laws of the State and any action arising from or relating to this Ground Lease shall be filed and maintained in Sacramento County Superior Court, Sacramento, California.

(d) Section Headings. All articles, paragraph and section headings, titles or captions contained in this Ground Lease are for convenience of reference only and are not intended to define or limit the scope of any provision of this Ground Lease.

(e) Conflicts Between Terms of Documents. Nothing in this Ground Lease is intended to amend, modify or supersede the PDCA except as expressly provided herein. In the event of any inconsistency in the PDCA and this Ground Lease, the inconsistency shall be resolved by giving preference to the PDCA. In the event of any inconsistency between this Ground Lease and the Bond Documents, the inconsistencies shall be resolved by giving preference to the Bond Documents.

(f) Relationship of Parties. The Department and its agents and employees involved in the performance of this Ground Lease shall act in an independent capacity and not as officers, employees or agents of the Participating County.

(g) Successors and Assigns. The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective Parties.

(h) Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Ground Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason by a court of competent jurisdiction and the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants or conditions of this Ground Lease shall be affected thereby, and each provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

(i) Notices. All notices herein which are to be given or which may be given by either Party to the other, shall be in writing and shall be deemed to have been given three (3) business days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows:

[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]

To the Board: State Public Works Board
915 L Street, 9th Floor
Sacramento, CA 95814
Attention: Executive Director
Facsimile: 916-449-5739

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]

Nothing herein contained shall preclude the giving of any such written notice by personal service, in which event notice shall be deemed given when actually received. The address to which notices shall be mailed to a Party may be changed by written notice given to all Parties as hereinabove provided.

(j) Execution and Counterparts. This Ground Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Ground Lease. It is also agreed that separate counterparts of this Ground Lease may separately be executed by the signatories to this Ground Lease, all with the same force and effect as though the same counterpart had been executed by all of the signatories.

(k) Bankruptcy. In the event of any bankruptcy proceeding, this Ground Lease will not be treated as an executory contract and cannot be rejected by the Participating County.

(l) Exhibits. The following Exhibits are attached to this Ground Lease and incorporated by reference herein.

- Exhibit A: Project Description
- Exhibit B: Legal Description of the Site
- Exhibit C: Form of Easement Agreement for Grants of Access, Utilities and Repairs
- Exhibit D: Form of Legal Opinion Letter
- Exhibit E: List of the Permitted Encumbrances
- Exhibit F: Pending and Threatened Lawsuits

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

[PARTICIPATING COUNTY]

By: _____
Name:
Title:

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

By: _____
Name:
Title:

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

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

Date: _____

**APPROVED: DEPARTMENT OF GENERAL
SERVICES OF THE STATE OF
CALIFORNIA**
(Pursuant to Government Code Section 11005)

By: _____
Name:
Title:

State of California)

County of _____)

On _____, 20__ before me, _____, notary,
(here insert name and title of the officer)

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California)

County of _____)

On _____, 20__ before me, _____, notary,
(here insert name and title of the officer)

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that, pursuant to Section 27281 of the California Government Code, the interest in real property conveyed by the Ground Lease dated as of _____, 20__ for reference only from the County of _____, a Political Subdivision of the State of California to the State of California on behalf of the Department of Corrections and Rehabilitation of the State of California is hereby accepted by the undersigned officer on behalf of the State Public Works Board pursuant to authority conferred by said Board in its duly adopted delegation resolution on December 13, 2013.

Note to Recorder: If this certificate is for a correction deed, all corrections and/or changes to the previously recorded deed must be reviewed and accepted by the State prior to recording a correction deed. All correction deeds require a new Certificate of Acceptance dated subsequent to recordation of the original deed or the most recent correction deed if any.

ACCEPTED

STATE PUBLIC WORKS BOARD OF THE
STATE OF CALIFORNIA

By: _____
Name: _____
Title: _____

Date: _____

APPROVED

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

By: _____
Name: _____
Title: _____

Date: _____

APPROVED

DEPARTMENT OF GENERAL SERVICES OF
THE STATE OF CALIFORNIA
(Pursuant to Government Code Section 11005)

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT A

(Project Description)

(to be inserted)

FORM OF DOCUMENT

EXHIBIT B

(Legal Description of the Site)

(to be inserted)

FORM OF DOCUMENT

EXHIBIT C

(Form of Easement Agreement for Grants of Access, Utilities and Repairs)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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.

[THE AREA ABOVE IS RESERVED FOR RECORDER'S USE]

EASEMENT AGREEMENT FOR GRANTS OF ACCESS, UTILITIES AND REPAIRS

This Easement Agreement for Grants of Access, Utilities and Repairs (this "Easement Agreement"), dated for reference only as of _____, 20__, is made by and between COUNTY OF _____, (the "Participating County"), a Political Subdivision of the State of California, as grantor, 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 of California, as grantee.

RECITALS

A. The Participating County, as landlord, and the Department as tenant, entered into a ground lease dated as of _____, 20__ for reference only, (the "Ground Lease") for the lease of that certain real property located in the County of [_____] and more particularly described in Exhibit 1, attached hereto and incorporated herein by this reference (the "Site"); and

B. The Ground Lease provides that the Participating County, as owner of certain real property adjacent to the Site, shall grant Easements to the Department in the Easement Property, which is more particularly described in Exhibit 2, attached hereto and incorporated herein by this reference; and

C. The Participating County and the Department desire to the grant of Easements in the Easement Property on the terms and conditions contained in this Easement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Definitions. Unless otherwise required by the context, all capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Ground Lease or the Project Delivery and Construction Agreement.

2. Grant and Description of Easements.

2.1 Grant of Access Easement. The Participating County, as the owner of the Easement Property, hereby establishes and grants to and for the benefit of the Department and the Board and their respective contractors, subcontractors, employees, lessees, licensees, permittees, successors and assigns a non-exclusive easement over and across the Easement Property as shown in Exhibit 2 hereto for purposes of ingress and egress to and from the Site and the Project (the "Access Easement"); provided, however, that rights pursuant to such Access Easement shall only be exercised if there is no reasonable access to the Site and the Project via adjacent public streets and roadways and subject to the security limitations set forth in Section 2.3 hereof; and provided further, that such Access Easement is only effective (i) during such times where the Department, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Sublease or (ii) during such times where the Board, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Lease.

2.2 Grant of Utilities and Repairs Easement. The Participating County, as the owner of the Easement Property, hereby grants to and for the benefit of the Department and the Board and their respective contractors, subcontractors, employees, lessees, licensees, permittees, successors and assigns a non-exclusive easement across, over and under the Easement Property as shown in Exhibit 2 hereto for the purpose of: a) installation, maintenance and replacement of utility wires, cables, conduits and pipes for "Utilities", as defined below; and b) other purposes and uses necessary or desirable for the repair, operation and maintenance of the Facility (the "Utilities and Repairs Easement" and together with the Access Easement, the "Easements"); provided, however, that such Utilities and Repairs Easement is subject to the security limitations set forth in Section 2.3 hereof; and; provided further, that such Utilities and Repairs Easement is only effective (i) during such times where the Department, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Sublease or (ii) during such times where the Board, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Lease. "Utilities" shall mean any and all wet and dry utilities (including sewer) necessary or required to service the Facility, including, without limitation, all electrical, natural gas, water, sewer, telephone, data, and other telecommunications services.

2.3 Security Limitation on Easements. The exercise of the rights granted under the Easements will be expressly subject to the limitations and requirements imposed by the Participating County's customary security measures for the Participating County's facilities that may be located on the Easement Property (the "Security Measures"). Prior to the exercise of any rights under the Easements, the Department or the Board, as the case may be, or their respective lessees, successors or assigns shall contact the [Title of Appropriate Individual at Participating County] to ensure that such exercise of rights granted under the Easements will be in compliance

with the requirements of the Security Measures.

3. No Unreasonable Interference. The Participating County shall not conduct any activity on, under or about the Easement Property that would unreasonably interfere with the use of the Easements.

4. Term of Easement Agreement; No Termination by Breach. The term of this Easement Agreement shall be coextensive with the Term of the Ground Lease, as such Term may be extended or terminated as provided in the Ground Lease. No breach of this Easement Agreement shall entitle any of the parties hereunder to cancel, rescind, or otherwise terminate this Easement Agreement, but such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any breach.

5. Character. The Easements granted by this Easement Agreement shall be appurtenant to the Site and nonexclusive and for the use and benefit of the Department and the Board. This Easement Agreement is not intended to grant a fee interest in the Easement Property, nor is it intended to be a lease or a license. The Department acknowledges that the Easements herein granted are nonexclusive easements and that the Participating County and its successors and assigns may grant one or more additional non-exclusive easements in the Easement Property to third parties, so long as the rights granted by such easements do not materially interfere with or hinder the use of the Easements by the Department or the Board or that of their respective lessees, successors or assigns.

6. Covenants Running with the Land; Binding on Successors. Pursuant to California Civil Code section 1468, this Easement Agreement and the Easements are covenants related to the use, repair, maintenance and improvement of the properties benefited and burdened hereby, and, as such, the covenants set forth herein shall be binding upon the Easement Property and shall be binding upon all parties having or in the future acquiring any interest in the Easement Property.

7. Binding Effect. This Easement Agreement shall be binding on and shall inure to the benefit of the lessees, successors and assigns of the Participating County, the Department, and the Board.

8. Recordation of Easement Agreement. This Easement Agreement shall be recorded in the Official Records of [ENTER COUNTY NAME] County, State of California, and shall serve as notice to all parties succeeding to the interest of the parties hereto that their use of the Site and the Project and the Easement Property shall be benefited or restricted, or both, in the manner herein described.

9. Entire Agreement; Amendments. This Easement Agreement contains the entire agreement of the parties hereto relating to the Easements herein granted. Any representations or modifications concerning this Easement Agreement shall be of no force and effect, excepting a subsequent modification in writing, signed by the Department and approved by the Board and the current owner of the Easement Property and recorded in the Official Records of [ENTER COUNTY NAME] County, State of California.

10. Warranty of Authority. The Participating County represents and warrants as of

the Effective Date that (i) it is the legal owner of the Easement Property, (ii) it has full power and authority to place the encumbrance of this Easement Agreement on the Easement Property, (iii) it has not conveyed (or purported to convey) any right, title or interest in or to the Easement Property, except as has been disclosed in writing to the Department prior to the Effective Date, and (iv) if necessary, it has the written consent of any lenders, tenants and subtenants of the Easement Property to the terms and conditions of this Easement Agreement.

11. Counterparts. This Easement Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Easement Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

THE COUNTY OF [COUNTY]

By: _____

Name:

Title:

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

By: _____

Name:

Title:

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

By: _____

Name:

Title: [Executive Director or Deputy Director]

**APPROVED: DEPARTMENT OF GENERAL
SERVICES OF THE STATE OF
CALIFORNIA**

(Pursuant to Government Code Section 11005)

By: _____

Name:

Title:

State of California)

County of _____)

On _____, 20__ before me, _____, notary,
(here insert name and title of the officer)

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

FORM OF DOCUMENT

State of California)

County of _____)

On _____, 20__ before me, _____, notary,
(here insert name and title of the officer)

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

FORM OF DOCUMENT

CERTIFICATE OF ACCEPTANCE

This is to certify that, pursuant to Section 27281 of the California Government Code, the easement interest in real property conveyed by the Easement Agreement for Grants of Access Utilities, and Repairs dated as of _____, 20__ for reference only from the County of _____, a Political Subdivision of the State of California to the State of California on behalf of the Department of Corrections and Rehabilitation of the State of California is hereby accepted by the undersigned officer on behalf of the State Public Works Board pursuant to authority conferred by said Board in its duly adopted delegation resolution on December 13, 2013.

Note to Recorder: If this certificate is for a correction deed, all corrections and/or changes to the previously recorded deed must be reviewed and accepted by the State prior to recording a correction deed. All correction deeds require a new Certificate of Acceptance dated subsequent to recordation of the original deed or the most recent correction deed if any.

ACCEPTED

STATE PUBLIC WORKS BOARD OF THE
STATE OF CALIFORNIA

By: _____
Name: _____
Title: _____

Date: _____

APPROVED

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

By: _____
Name: _____
Title: _____

Date: _____

APPROVED

DEPARTMENT OF GENERAL SERVICES OF
THE STATE OF CALIFORNIA
(Pursuant to Government Code Section 11005)

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT 1 TO EASEMENT AGREEMENT

LEGAL DESCRIPTION OF THE SITE

(To Be Attached)

FORM OF DOCUMENT

EXHIBIT 2 TO EASEMENT AGREEMENT
LEGAL DESCRIPTION OF THE EASMENT PROPERTY

(To Be Attached)

FORM OF DOCUMENT

EXHIBIT D

(Form of Legal Opinion Letter)

[LEGAL COUNSEL LETTERHEAD]

[Client]

State Public Works Board
of the State of California
Sacramento, California

Re: Ground Lease By and Between [insert name of the Participating County] and the Department for the [insert name of the Project] Located at [insert address of the Site]

Ladies and Gentlemen:

I am legal counsel for [insert name of client] with respect to the above referenced matter. I have examined originals or copies, certified or otherwise identified to my satisfaction, of such documents, exhibits, public records and other instruments in connection with the Ground Lease dated as of _____, 20__ for reference only between [insert name of the Participating County], as landlord, and the Department of Corrections and Rehabilitation of the State of California (the "Department"), as tenant, (the "Ground Lease"), and have conducted such other investigations of fact and law as I have deemed necessary for the purpose of this opinion.

I am of the opinion that:

[Use one of the following alternatives]

[Alternative 1: If the Participating County is the client]

1. The [insert name of the Participating County] is a political subdivision of the State of California created in accordance with the provisions of the Constitution of the State of California, with full legal right, power and authority to enter into and perform its obligations under the Ground Lease *[if easements are being granted under the terms of an Easement Agreement in the form of Exhibit C to the Ground Lease, add: "and Easement Agreement in the form attached as Exhibit C to the Ground Lease" and revise letter accordingly].*

[Alternative 2: If the Department is the client]

1. The Department is an entity of state government of the State of California with full legal right, power and authority to enter into and perform its obligations under the Ground

Lease [if easements are being granted under the terms of an Easement Agreement in the form of Exhibit C to the Ground Lease, add: "and Easement Agreement in the form attached as Exhibit C to the Ground Lease" and revise letter accordingly].

[The following provisions apply regardless of the client]

2. The Ground Lease [and Easement Agreement] [has/have] been duly authorized, executed and delivered by [insert name of client], and [is/are] valid and binding upon and enforceable against the [insert name of client] in accordance with [its/their] terms if [it is/they are] in like fashion valid and binding upon and enforceable against the respective other parties thereto, except that enforceability may be limited by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

3. The execution and delivery by the [insert name of client] of the Ground Lease [and Easement Agreement] and compliance with the provisions thereof do not and will not materially conflict with or constitute on the part of the [insert name of client] a breach of or a default under the law, administrative regulation, judgment, decree or any agreement or other instrument known to me which the [insert name of client] is a party or otherwise subject.

4. All actions on the part of the [insert name of client] necessary for the execution and performance of the Ground Lease [and Easement Agreement] have been duly and effectively taken, and no consent, authorization or approval of, or filing or registration with, any governmental or regulatory officer or body not already obtained or not obtainable in due course by the [insert name of client] is required to be obtained by the [insert name of client] for the making and performance of the Ground Lease [and Easement Agreement] .

5. There is no action, suit or proceeding pending (with the service of process having been accomplished) to restrain or enjoin the execution and delivery of the Ground Lease [and Easement Agreement], or in any way contesting or affecting the validity of the Ground Lease [and Easement Agreement].

Very truly yours,

[INSERT NAME OF CLIENT]

By: _____

Name: _____

Its: _____

EXHIBIT E

(List of the Permitted Encumbrances)

(to be inserted)

- [1. Right of Entry for Construction and Operation]

FORM OF DOCUMENT

EXHIBIT F

(Pending and Threatened Lawsuits)

(to be inserted)

FORM OF DOCUMENT

STATE OF CALIFORNIA

**BOARD OF STATE AND COMMUNITY CORRECTIONS
JAIL CONSTRUCTION AGREEMENT**

FOR _____

This Board of State and Community Corrections Jail Construction Agreement (“**Agreement**”) is entered into as of _____, 20__ (“**Effective Date**”), by and between the Board of State and Community Corrections (“**BSCC**”), an entity of the state government of the State of California (“**State**”), and _____ (“**Participating County**”), a Political Subdivision of the State. BSCC and Participating County are referred to collectively herein as the “**Parties**,” and individually as a “**Party**.”

RECITALS

WHEREAS, Participating County has proposed to build a jail facility as more particularly described in Exhibit B attached hereto (“**Project**”) located at _____ (“**Site**”) under Chapter 3.12, Part 10b of Division 3 of Title 2 of the California Government Code and the corresponding regulations set forth in Title 15, Division 1, Chapter 1, Subchapter 6 of the California Code of Regulations (collectively, the “**AB 900 Jail Financing Program**”).

WHEREAS, this Agreement is being executed concurrently with the execution of the Project Delivery and Construction Agreement (“**PDCA**”) entered into between the Participating County, BSCC, the State Public Works Board of the State of California (“**Board**”) and the Department of Corrections and Rehabilitation (“**Department**”). The Department, the Board and BSCC are referred to collectively herein as “**Agencies**.”

WHEREAS, the purpose of this Agreement is to set forth the roles, responsibilities and performance expectations of the Parties with respect to the Participating County’s construction of the Project under the authority of the BSCC and the procedures for reimbursement by the State of those Participating County costs eligible for reimbursement as provided for under the AB 900 Jail Financing Program. This Agreement is intended to be read in conjunction with the other agreements necessary for the construction and financing of the Project under the AB 900 Jail Financing Program including, without limitation, the PDCA and the other agreements described in the PDCA recitals. Nothing in this Agreement is intended to amend or modify the rights and obligations of the Parties under those other agreements including, without limitation, the PDCA.

WHEREAS, the Total Project Costs for the Project shall be defined in Article 3, Section 3.1(a) of the PDCA. The State will provide financing (“**State Financing**”) (up to a maximum of _____ dollars (\$_____) (“**Maximum State Financing**”) and the Participating County will provide the Cash (hard) Match (as defined in Article 6(C) below) and the In-Kind (soft) Match (as defined in Article 6(C) below) (with the Cash (hard) Match and the In-kind (soft) Match collectively referred to as “**Participating County Funding**” and together with the Maximum State Financing, the “**Total Eligible Project Costs**”). Total Eligible Project Costs shall be used in determining Cash (hard) Match credit and In-kind (soft) Match credit to the Participating Counties as specified in Exhibit A to this Agreement. As stated in Article 1, Section 1.3 of the PDCA, the AB 900 Jail Financing Program is predicated on the Board’s ability

to issue bonds for the Project.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. TERM AND TERMINATION

A. Term. This Agreement shall commence on the Effective Date and shall terminate upon the completion and State acceptance of the Final Audit (as defined below in Article 4(C)) unless terminated earlier as provided in Article 1(C) below.

B. Survival. The provisions of Articles 1(C)(3), 1(C)(4), 3(D), 4(C), 4(D), 6(B)(5), 6(B)(6), 9, 10 and 11, and Articles 3, 4, 5, 6, 7, 8, and 10, 11 of Exhibit A shall survive termination of the Agreement.

C. Termination.

1. BSCC in consultation with the other Agencies may terminate this Agreement in the event any of the following events or conditions occurs:

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

(b) Termination of the PDCA as provided for in Article 2, Section 2.2(a)(i)-(v) and (b) of the PDCA;

(c) Substantive alteration of the scope, cost or schedule of the Project without the prior written approval of BSCC and the Board as required under this Agreement and the PDCA; or

(d) Participating County's refusal or inability to complete the Project in a manner consistent with the Agreement, and the other Project Documents (as defined below in Article 3) including all timelines, plans, and specifications as approved by BSCC, or refusal or inability to comply with any Applicable Law.

2. The Participating County may, prior to the State providing any amount of financing, terminate this Agreement in the event any of the following occurs:

(a) The State's breach of a material term of this Agreement, any Project Document or any Applicable Laws 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;

(b) Termination of the PDCA as provided for in Article 2, Section 2.2(a)(i)–(v) and (b) of the PDCA;

(c) Failure of the State to execute the Ground Lease or the Right of Entry for Construction and Operation; or

(d) In the event the Board determines the Participating County is no longer eligible for Project financing under the AB 900 Jail Financing Program as set forth in Article 1, Section 1.2 of the PDCA.

3. In the event of termination as provided in Article 1(C)(1), and unless the Parties agree in writing otherwise, Participating County shall, upon notification, refund to the Agencies an amount equal to all State Financing previously disbursed to the Participating County. Any State Financing so remitted to the Agencies may be subject to interest equal to the rate earned by the State Pooled Money Investment Account. Participating County shall not be required to refund any State Financing in the event of termination solely because, through no fault of Participating County, the Board determines it is not feasible or appropriate to issue bonds or is unable to issue bonds to finance the Participating County's Project.

4. Nothing in this Article 1 in any way alters or limits the authority of BSCC or the Agencies to withhold State Financing in accordance with Applicable Laws (as defined below) or any other right or remedy available to the State at law or in equity for breach of the Agreement.

ARTICLE 2. PROJECT OFFICIALS

A. BSCC Representative. The BSCC Executive Director or his or her designee shall be the State's representative ("**Agency Representative**") for administration of this Agreement. Any amendment to this Agreement, including any exhibit, schedule or attachment hereto, shall be binding on the State only if signed by the Agency Representative. This Article 2(A) shall not limit any requirements for amendment of any other agreement that is a Project Document.

B. Participating County Construction Administrator. The Participating County has appointed a County Construction Administrator as identified below. Participating County agrees that its County Construction Administrator shall be its representative for the administration of the Agreement and shall have full authority to act on behalf of the Participating County. Participating County agrees that all communications given to its County Construction Administrator shall be binding as if given to the Participating County. Participating County agrees that any documents required to be submitted to the Agencies, including but not limited to, quarterly progress reports and final project summary reports, shall be certified for accuracy by its County Construction Administrator in form reasonably acceptable to BSCC. Any Amendment to this Agreement and any other Project Document shall be binding on the Participating County only if signed or certified in form reasonably acceptable to BSCC by the County Construction Administrator.

County Construction Administrator: [REDACTED]

Title: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

C. Participating County Project Financial Officer. The Participating County has appointed a Project Financial Officer as identified below. Participating County agrees that its Project Financial Officer shall be responsible for establishing an official project file and a separate account for depositing of funds paid under this Agreement, and ensuring that project accounting procedures and practices are in accordance with generally accepted government accounting principles and practices (see Accounting Standards and Procedures for Counties, California State Controller, Division of Local Government Fiscal Affairs) with adequate supporting documentation maintained in such detail so as to provide an audit trail which will permit tracing transactions from support documentation, to the accounting records, to the financial reports and billings. Participating County agrees that all fiscal documents, including all invoices and expenditure statements, required to be submitted to BSCC shall be certified for accuracy by its Project Financial Officer.

Project Financial Officer: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

D. Participating County Project Contact Person. The Participating County has appointed a County Project Contact Person as identified below. Participating County agrees that its County Project Contact Person shall be responsible for coordinating and transmitting information to BSCC and receiving and disseminating information from BSCC. Participating County agrees that all communications given to its County Project Contact Person shall be binding as if given to the Participating County.

County Project Contact Person: [REDACTED]
Title: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

Either Party may change its Project representatives upon written notice to the other Party.

ARTICLE 3. PROJECT DOCUMENTS AND APPLICABLE LAWS.

A. Project Documents. The Participating County agrees to construct the Project in accordance with the following agreements and documents each as may be amended in accordance with its terms and which, together with the Agreement, shall be referred to herein as the “**Project Documents**”: (1) BSCC Jail Construction Agreement Standard Conditions attached hereto as Exhibit A; (2) Participating County’s Project Proposal [Insert Name and Date of Participating County’s Bid Proposal] (“**County Project Proposal**”); (3) County Project Description Detail and Budget (“**Project Description**”) in the form attached hereto as Exhibit B; (4) Ground Lease, Right of Entry for Construction and Operation, Facility Lease and the Facility Sublease as those terms are defined in the PDCA; and (5) the PDCA .

B. Applicable Laws. The Participating County agrees to comply with all federal, state or local laws, regulations, rules, ordinances and guidelines applicable to the construction of the Project including, without limitation the following (collectively “**Applicable Laws**”):

1. The Minimum Standards for Local Detention Facilities and Local Jail Construction Financing Program regulations contained in Title 15, Division 1, Chapter 1, Subchapters 4 and 6 of the California Code of Regulations (“**CCR**”).
2. The Minimum Standards for Local Detention Facilities and the fire and life safety regulations contained in Title 24 of the CCR.
3. California Public Contract Code.
4. California Environmental Quality Act (CEQA) contained in Section 21000 *et seq.* of the California Public Resources Code and Title 14, Division 6, Chapter 3, Sections 15000 *et seq.* of the CCR.
5. Accounting Standards and Procedures for Counties, California State Controller, Division of Local Fiscal Affairs.
6. Construction Financing Agreement Administration and Audit Guide.

C. Incorporation of Approved Changes. Upon their completion, all Participating County assurances and submittals, submitted to and approved in writing by BSCC are incorporated herein by reference and made a part of this Agreement.

D. Precedence. 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) PDCA; 2) the Ground Lease (as defined in the PDCA); 3) this Agreement including the BSCC Jail Construction Agreement Standard Conditions attached hereto as Exhibit A; 4) the Right of Entry for Construction and Operation (as defined in the PDCA); 5) Participating County’s Project Proposal; 6) Participating County Project Description Detail and Budget; and 7) the Participating County’s proposal(s), modification(s), and submittals. 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.

ARTICLE 4. PARTICIPATING COUNTY OBLIGATIONS

Participating County agrees to the following covenants, assurances and submittals:

A. Participating County's Construction of Jail. The Participating County shall construct the Project to ensure and enable compliance with all Applicable Laws, and Participating County agrees that State Financing and Cash (hard) Match funds shall not supplant funds otherwise dedicated or appropriated for construction activities. No review or approval provided by the State, the Agencies or the State Fire Marshal of documents or submittals shall relieve Participating County of its obligation to design and construct the Project in accordance with this Agreement and all Applicable Laws including, without limitation environmental, procurement, safety and health, the AB 900 Jail Financing Program, and Titles 15 and 24 of the CCR. The Agencies' review and approval of any Project Document is for the Agencies' purposes only. No alleged failure or oversight related to the Agencies' review of the Project or the Project Documents shall be construed as a waiver of any rights of the Agencies or the State of California, or construed as an excuse to performance by Participating County under this Agreement or any other agreement. All Plans (as defined below) prepared by the Participating County shall be consistent with the Participating County Project Proposal.

B. Valley Fever. California is one of several states in the country with soils that may contain spores known to cause the disease Coccidioidomycosis (sometimes called "Valley Fever"), which spores may be transmitted through contact with dirt and fugitive dust associated with construction activities. The Participating County shall disclose this information to contractor in or prior to execution of a Construction Agreement. The Participating County, its contractor and any lower-tier subcontractors shall take appropriate precautionary measures designed to minimize the exposure of their respective employees and other workers, Agencies' employees, and other individuals or personnel who may be present during construction activities.

C. Record Keeping and Audit Requirements. Participating County shall keep such full and detailed account records as are necessary for proper financial management of the Project. Participating County shall maintain a complete and current set of all books and records relating to the design and construction of the Project. Agencies shall be entitled, upon forty-eight (48) hour written notice, to inspect all books, records, and accounts kept by Participating County relating to the work contemplated by this Agreement. Within ninety (90) calendar days after Final Completion (as defined below), Participating County shall deliver to Agencies a financial audit of the Project ("**Final Audit**"). The Final Audit shall be performed by a Certified Public Accountant or a Participating County auditor that is organizationally independent from the Participating County's project financial management functions. Nothing in this Article 4(C) shall limit the Participating County's record retention obligations as set forth in Article 7 of the PDCA. For purposes of this Agreement, "**Final Completion**" shall mean completion of the Project.

D. Compliance with Project Documents and Applicable Laws. Participating County agrees to comply with all terms and conditions of this Agreement, the other Project Documents

and all exhibits and schedules attached hereto or thereto and all Applicable Laws.

E. Project Plans. In addition to all submission requirements under the PDCA, the Participating County shall submit to BSCC the architectural and design documents, drawings, specifications, calculations, general and special conditions, submittals, Project budgets, schedules and contracts (collectively, "Plans") within the time frames as specifically set forth in Exhibit B and as otherwise may be required by the Project Documents and Applicable Laws. As a condition to the financing to be provided by the State through interim financing or the sale of the Bonds, Participating County shall cause to be prepared, in a form that are ready to construct, all required Plans and bid documents necessary to solicit bids, and complete the Project on time and within budget. Participating County is solely responsible for preparing all Plans and other documents for the public bidding process, as provided by Applicable Law. Participating County shall not solicit bids for the Project until BSCC, together with the State Fire Marshal, have approved the final construction documents and specifications and the Department of Finance has approved these documents and specifications.

F. Construction. Participating County shall be responsible to contract for all design and construction services, and shall manage the day-to-day design and construction of the Project. 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 Project Documents, all Applicable Laws, as well as all other agreements between the Agencies and Participating County.

G. Operation of Jail. Participating County shall be responsible to maintain the jail upon Final Completion and staff and operate the jail no later than ninety (90) days after Final Completion.

H. Professional Services. Participating County shall be responsible for providing all necessary professional services in order to carry out the design and construction of the Project. Participating County shall obtain all professional services from properly licensed design professionals. All Plans prepared by such design professionals shall bear the signature and seal of the design professional. All construction work on the Project shall be performed by properly licensed contractors and subcontractors. Participating County is encouraged to utilize a qualified construction manager and claims avoidance experts to facilitate timely and efficient construction of the Project.

I. Completion of Project. Participating County agrees to proceed expeditiously with, and complete, the Project in accordance with the Project Documents and Plans as approved by the BSCC and the Agencies and/or as incorporated in all provisions of this Agreement. Participating County acknowledges and understands that failure to meet application assurances, construction timelines and any other milestones or timelines as set forth in the Project Documents or Plans as approved by the Agencies and/or as incorporated in all provisions of this Agreement, may result at any time in award adjustments or Agreement termination by the BSCC.

ARTICLE 5. SUBSTANTIAL CHANGES.

In addition to the modification requirements set forth in Article 4, Section 4.2 of the

PDCA, no substantial change to the Project Documents or other substantial modification to the Project may be made by Participating County without the prior written permission of the BSCC. Minor modifications to the Project do not require BSCC approval, but must be documented and reported on routine progress reports to the BSCC. Without limiting the foregoing, BSCC approval shall be required upon any of the following events or circumstances:

1. more than minor changes which affect the design or scope of the Project;
2. a delay or change in the date of substantial completion or Final Completion;
3. a more than minor change to the design, location, size, capacity or quality of major items of equipment. As used herein "substantial" is as defined in the State Administrative Manual, Section 6863. As used herein a minor change is any change which does not rise to the level of a substantial change under the State Administrative Manual, Section 6863;
4. a change in approved budget categories, or movement of dollars between budget categories as indicated in Exhibit B; or
5. any change that would impact BSCC or State Fire Marshal construction or operational regulations including, without limitation, Titles 15 and 24 of the CCR, or which affects the security or fire and life safety of the facility.

Participating County agrees that its County Construction Administrator will give prompt notification in writing to the BSCC of the occurrence of any of the above events and report any substantial modifications to the Agreement for Construction with its contractor. BSCC shall notify the Department consistent with Article 4 of the PDCA, and the Department shall make a Scope Change Request to the Board. Approval of this Scope Change Request by the Board shall be required before material change to the Project Documents or other substantial modification to the Project may be made by the Participating County.

In no event shall any 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 6. PROJECT FUNDING

A. Invoices. Invoice and progress/final reports and all required audit reports shall be submitted to the BSCC in a timely manner as specified in this Agreement and Exhibit A.

B. State Financing Obligations.

1. In no event or circumstance shall the State or 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. Participating County waives any and all claims against the Agencies or the State of California for any costs which exceed the Maximum State Financing. The Participating County is solely responsible for any and all cost, expenses or fees

of the Project which exceed the Maximum State Financing. Reimbursement of county costs from State Financing shall be limited to those costs permitted under Article 1(A) of Exhibit A and/or specifically identified in Exhibit B as "**Eligible State Costs**" provided, however, the State's obligations to reimburse Participating County for any State Financing is contingent on (1) the availability of Interim Financing and (2) even if Interim Financing is provided, the successful sale of bonds sufficient to cover all remaining Eligible State Costs. State Financing shall be subject to the terms and conditions set forth in the PDCA.

2. Eligible State Costs subject to reimbursement shall in no event or circumstance exceed Maximum State Financing. Because the funds to be paid are limited, Participating County shall be obligated to complete the Project without additional State Financing. No additional State Financing will be available, and Participating County should take all necessary precautions to ensure that the Project is designed and constructed within the Project budget. The Participating County shall be responsible for any costs exceeding the Total Eligible Project Costs.

3. State shall reimburse the Participating County for Eligible State Costs provided Participating County's performance of the Project is consistent with the Project Documents, including the Construction Schedule, and Participating County is not in breach of any term or condition of this Agreement, any Project Document, or any Applicable Law. At mutually agreed upon intervals as set forth in Exhibit A, Article 7, Participating County shall submit to BSCC a reimbursement request for payments of Eligible State Costs for which Participating County has already paid.

4. BSCC may reject any invoice or item on an invoice should it be determined that such invoice or item is ineligible for reimbursement under the terms of this Agreement, the Project Documents or any Applicable Laws ("**Improper Expenditure**"). Should it later be determined Participating County has been reimbursed for an Improper Expenditure or the State has made a payment to Participating County in excess of the amount for which the State is obligated ("**Excess Payment**"), BSCC may withhold future payments or repayments in amounts equal to the Improper Expenditure or the Excess Payment. In the event the amount of an Improper Expenditure exceeds the total reimbursement amount due Participating County, or should the discovery of the Improper Expenditure or Excess Payment occur after payment of the Withhold Amount (as defined below), Participating County shall immediately pay to BSCC the amount of the Improper Expenditure or Excess Payment.

5. At such time as the unreimbursed balance of the Eligible State Costs equals Five percent (5%) of the total Eligible State Costs ("**Withhold Amount**"), BSCC shall withhold that amount as security for Participating County's performance of all its obligations under this Agreement. The Withhold Amount shall be released upon satisfaction of all of the following conditions: (a) there has been Final Completion of the Project, (b) delivery by Participating County and acceptance by Agencies of the Final Audit and the Final Project Summary Report, (c) Participating County has staffed and operated the jail as required under Article 4(G) above, and (d) Participating County is not in breach of any provisions of this Agreement, the other Project Documents and Applicable Laws.

6. All agreements with the contractor and any other contractor or

subcontractor of Participating County or the contractor providing services or goods on the Project and for which reimbursement with State Financing for all or any portion of the payment for such services or goods is sought, shall require the contractor or subcontractor to list construction costs according to the CSI Divisions for the approved Schedule of Values.

C. Participating County Funding. Subject to all terms and provisions of this Agreement, the Participating County agrees to appropriate and spend cash (hard) matching funds as provided in Exhibits A and B (“**Cash (hard) Match**”). Subject to all terms and provisions of this Agreement, the Participating County agrees to provide in-kind (soft) match in accordance with Exhibits A and B (“**In-kind (soft) Match**”). Participating County agrees to expend Cash (hard) Match funds on a schedule that is at least pro-rata with the percentage expenditure of Eligible State Costs.

ARTICLE 7. ADMINISTRATIVE OVERSIGHT BY BOARD

Notwithstanding any other term or condition of this Agreement or any other Project Document, the scope and cost of the Project shall be subject to approval and administrative oversight by the Board, as required by California Government Code Section 15820.911.

ARTICLE 8. PERFORMANCE AND PAYMENT BONDS

Participating County shall require the contractor to procure and maintain a payment bond and a performance bond each of which shall be in an amount not less than one hundred percent (100%) of the contractor's total contract price as set forth in the agreement between Participating County and contractor. The bonds shall be issued by one or more surety companies acceptable to the Agencies. The performance bond required by this Article 8 shall name the State as an additional beneficiary under the bonds.

ARTICLE 9. INDEMNITY

As required by California Government Code Section 15820.911(d), 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 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 gross negligence or willful misconduct of the Indemnitees. These obligations shall survive any termination of this Agreement.

ARTICLE 10. DISPUTES

Disputes arising under or relating to this Agreement shall be resolved in accordance with the provisions of Article 10 of Exhibit A.

ARTICLE 11. GENERAL TERMS AND CONDITIONS

The general terms and conditions published by the Department of General Services at

<http://www.documents.dgs.ca.gov/ols/GTC-610.doc> and applicable to all State of California contracts are hereby incorporated by reference into this Agreement. In the event of a conflict between GTC-610 and any sections herein, the sections herein take precedence. In signing below, the Participating County's authorized representative represents and warrants that the Participating County has read and understands these general terms and conditions.

ARTICLE 12. 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.

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

FORM OF DOCUMENT

IN WITNESS THEREOF, the Parties have executed this Agreement, as of the Effective Date.

BOARD OF STATE AND COMMUNITY CORRECTIONS

By: _____
Signature of Executive Director or Designee

Name and Title: _____
Date: _____

“PARTICIPATING COUNTY”

County of:

By: _____
Signature

Name and Title: _____
Date: _____

FORM OF DOCUMENT

EXHIBIT A

CONSTRUCTION AGREEMENT STANDARD CONDITIONS

ARTICLE 1. TOTAL ELIGIBLE PROJECT COSTS

A. Participating County shall only be reimbursed by the State from State Financing for Eligible State Costs. “**Eligible State Costs**” means reasonable and necessary Project costs actually incurred in construction of the Project and as specified in Exhibits A and B attached to the Agreement. Eligible State Costs also must be eligible for lease-revenue bond financing pursuant to this Agreement (including all Exhibits referenced therein) and all California state laws, rules, regulations, guidelines, and policies including, without limitation, Title 15, Local Jail Construction Financing Program regulations and any other Applicable Laws. Such Eligible State Costs shall include, but are not limited to, the items set forth in subsection (1) through (8) below. Participating County shall receive BSCC’s written consent prior to Participating County’s incurring the expense for any Project costs not listed below and for which Participating County wants State reimbursement provided such expenses do not fall within Participating County Costs as defined below in subsection (B).

1. On-site costs of facility construction of the BSCC-approved local jail facility project, including site preparation (eligible for State Financing or Cash (hard) Match).
2. Architectural programming and design (for activities by consultants and contractors; eligible for State Financing or Cash (hard) Match).
3. Construction management (for activities by consultants and contractors; eligible for State Financing or Cash (hard) Match).
4. Building permit fees, sewer/utility use or unit fees, and building inspection fees (eligible for State Financing or Cash (hard) Match).
5. Fixed equipment items (e.g., heating, ventilation, air conditioning, plumbing, lighting, communications, surveillance, security and life/safety equipment, etc.) as necessary for the operation of the BSCC-approved local jail facility (eligible for State Financing or Cash (hard) Match).
6. Fixed furnishings items (e.g., built-in and/or permanently affixed counters, tables, cabinets, seats, etc.) as necessary for the operation of the BSCC-approved local jail facility (eligible for State Financing or Cash (hard) Match).
7. Installation of existing fixed equipment and furnishings as necessary for the operation of the BSCC-approved local jail facility (eligible for State Financing or Cash (hard) Match).
8. Moveable equipment and moveable furnishings (subject to State review and approval; eligible for State Financing or Cash (hard) Match).

B. Participating County must provide a minimum of at least [redacted] percent ([redacted] %) of the Total Eligible Project Costs as any combination of Cash (hard) Match and In-kind (soft) Match funds. (Note to drafter: Large and Medium counties must provide a minimum of 10%). Cash (hard) Match funds cannot be used to supplant or replace funds otherwise dedicated or appropriated by the Participating County for construction activities. Cash (hard) Match funds cannot be claimed for salaries/benefits of regular employees of the Participating County Workforce but may be claimed for the services of consultants or contractors engaged to perform Project related services as described below. Cash (hard) Match funds only include costs of:

1. Items eligible for Eligible State Costs as described above;
2. Preparation costs for full or focused environmental reports (for activities by consultants and contractors);
3. Off-site costs, including access roads and utilities development, outside of a reasonable buffer zone surrounding the perimeter of the security fence, detention facility building and parking lot; and
4. Public art.

C. In-kind (soft) Match funds may be claimed for Project related costs for activities performed by Participating County staff or consultants. Eligible In-kind (soft) Match funds only includes:

1. Audit of Total Eligible Project Costs at the conclusion of the Project (staff salary/benefits of independent Participating County auditor or services of contracted auditor);
2. Needs assessments (staff salary/benefits and/or consultant costs directly related to the Project);
3. Site acquisition cost or current fair market land value supported by independent appraisal (on-site land only regardless of acquisition date) and as approved by the Department of General Services. This can be claimed for on-site land cost/value for new facility construction, on-site land cost/value of a closed facility that will be renovated and reopened, or on-site land cost/value used for expansion of an existing facility. It cannot be claimed for land cost/value under an existing operational local jail facility;
4. Participating County administration (staff salary/benefits directly related to the Project for activities after October 1, 2011);
5. Transition planning (staff salary/benefits and consultant activities directly related to the Project for activities after October 1, 2011); and
6. Real estate due diligence costs as billed to the Participating County by the State.

D. Participating County shall not under any circumstance be reimbursed by the State from Board interim financing sources, lease-revenue bond funds or from any other financing

source for Ineligible Project Costs. “**Ineligible Project Costs**” means all costs which are not eligible for lease-revenue bond financing or Participating County matching funds pursuant to the PDCA (including all Exhibits attached thereto) or pursuant to any California state law, rule, regulation, guideline, or policy including, without limitation, the AB 900 Jail Financing Program or any other Applicable Law. Participating County shall be responsible for all Ineligible Project Costs (“**Participating County Costs**”). Ineligible Project Costs also shall include but are not limited to the following:

1. Those Project Costs that are determined by the BSCC to be unreasonable or unnecessary costs.
2. Detention facility personnel and operational costs and related costs of supplies.
3. Soil and water contamination assessment/mitigation.
4. Excavation of burial sites.
5. Preparation of Environmental Impact Reports (ineligible for State Financing; eligible for Cash (hard) Match only if performed by consultants or contractors outside the regular county work force, eligible for In-kind (soft) Match if performed by county-paid employees).
6. Bonus payments for early completion of work.
7. Interest charges for late payments.
8. Interest on bonds or any other form of indebtedness required to finance Project costs.
9. Costs outside the scope of the BSCC-approved Project.
10. Fines and penalties due to violation of or failure to comply with federal, state or local laws, ordinances, or regulations.
11. Personal injury compensation or damages arising out of or connected with the Project, whether determined by adjudication, arbitration, negotiation, or otherwise.
12. All costs incurred in violation of the terms, provisions, conditions, or commitments of this Agreement.
13. Travel and per diem costs.
14. All costs arising out of or connected with contractor claims against the Participating County, or those persons for whom the Participating County may be vicariously liable, including, but not limited to, any and all costs related to defense or settlement of such claims.

15. Maintenance costs.
16. Supplanting of existing construction, programs, projects, or personnel.
17. All costs arising out of or attributable to Participating County's malfeasance, misfeasance, mismanagement, or negligence.
18. Temporary holding or court holding facilities.
19. Local Jail facilities or portions thereof operated by jurisdictions other than Participating County.

ARTICLE 2. PARTICIPATING COUNTY'S GENERAL RESPONSIBILITY

Participating County is solely responsible for design, construction, operation, and maintenance of the Project as identified in Exhibit B of this Agreement. Review and approval of plans, specifications, or other documents by BSCC, the Agencies and the State Fire Marshal, is solely for the purpose of proper administration of State Financing by the BSCC and the Agencies and shall not be deemed to relieve or restrict the Participating County's responsibility.

ARTICLE 3. PARTICIPATING COUNTY ASSURANCES AND COMMITMENTS

A. Compliance with Laws and Regulations. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Participating County shall at all times comply with all Applicable Laws (as defined in the Agreement).

B. Fulfillment of Assurances and Declarations. Participating County shall fulfill all assurances, declarations, representations, and statements made by the Participating County in the County Project Proposal, documents, amendments, and communications filed in support of its request for lease-revenue bond funds including adoption of a BSCC approved staffing plan for staffing and operating the facility in accordance with state standards within ninety (90) calendar days of construction completion.

C. Use of State Financing. Participating County shall expend all State Funds and identified matching funds solely for Eligible Project Costs. Participating County shall, upon demand, remit to the BSCC any State Financing not expended for Eligible Project Costs or an amount equal to any State Financing expended by the Participating County in violation of the terms, provisions, conditions, or commitments of this Agreement. Any State Financing so remitted to the BSCC shall include interest equal to the rate earned by the State Pooled Money Investment Account.

D. Permits and Licenses. Participating County agrees to procure all permits and licenses necessary to complete the Project, pay all charges and fees, and give all notices necessary or incidental to the due and lawful proceeding of the Project work.

E. Compliance with Deliverables, Drawings, and Specifications. Participating County agrees that deliverables, drawings, and specifications, upon which prime and subcontracts are awarded, shall be the same as those submitted to and approved by the BSCC.

F. Prime and Subcontracting Requirements. In accordance with the provisions of this Agreement, the Participating County may contract with public or private contractors of services for activities necessary for the completion of the Project. Participating County agrees that in the event of an inconsistency between the Agreement and any other Project Document and Participating County's Construction Agreement with a contractor, the Project Documents will prevail. Participating County shall ensure that the contractor complies with all requirements of the Project Documents and all instructions of the County Construction Administrator regarding compliance with the Project Documents.

Participating County assures that for any contract awarded by the Participating County, such insurance (e.g., fire and extended coverage, workers' compensation, public liability and property damage, and "all-risk" coverage) as is customary and appropriate will be obtained.

Participating County agrees that its contractor will list construction costs according to the CSI Divisions for the approved Schedule of Values. Since certain portions of the Project may not be eligible for State Financing in all requests for reimbursement, the Participating County's contractor shall separately list work not eligible for State Financing, and the County Construction Administrator shall identify such work for the contractor.

Participating County agrees that it is the County Construction Administrator's responsibility to provide a liaison between the Participating County, the BSCC, and its contractor. Participating County agrees that its contractor is not responsible nor required to engage in direct discussion with the BSCC or any representative thereof, except that the contractor shall in good faith exert its best effort to assist the Participating County in fully complying with all requirements of the contract.

Participating County agrees to place appropriate language in all contracts for work on the Project requiring the Participating County's contractor(s) to:

1. Books and Records. Maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to the contractor's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for the period set forth in Article 5 below, and shall be subject to examination and/or audit by the BSCC or designees, state government auditors or designees.

2. Access to Books and Records. Make such books, records, supporting documentations, and other evidence available to the BSCC or designees, the Department, the Board, the Department of General Services, the Department of Finance, the Bureau of State Audits, their designated representatives, during the course of the Project and for the period set forth in Article 5 below, and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, the Participating County agrees to include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

3. Contractor Advisement. Be advised that a partial source of financing for the agreement between the Participating County and contractor for construction of the Project is the State Financing, and that the Participating County may not have funds to finance the Construction Agreement independently of the State Financing. The contractor shall in all ways cooperate with the Participating County and the BSCC in maintaining a good working relationship. The contractor shall cooperate as instructed by the County Construction Administrator in resolving any disputes arising under the Agreement.

ARTICLE 4. PROJECT ACCESS

To the extent not inconsistent with the Bond Documents, as that term is defined in Article 1 Section 1.1(a) of the PDCA, at all times during 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.

ARTICLE 5. RECORDS

Participating County shall establish an Official Project File, as defined in Article 7, Section 7.1 of the PDCA.

Participating County shall establish separate accounting records for receipt, deposit, and disbursement of all Project funds as specified in Exhibit A Article 9.

Participating County shall maintain books, records, documents, and other evidence sufficient to reflect properly the amount, receipt, and disposition of all Project funds, including State Financing, any matching funds provided by the Participating County and the total cost of the Project. The maintenance requirements extend to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all awards, applications, and required financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under the award, whether they are employed full-time or part-time. Time and effort reports are also required for consultants and contractors. Supporting documentation for matching funds, goods or services shall, at a minimum, include the source of the match, the basis upon which the value of the match was calculated, and when the matching funds, goods, or services were provided. Receipts, signed by the recipient of donated goods and/or services should be issued and a copy retained. Generally accepted government accounting principles and adequate supporting documentation shall be maintained in such detail so as to provide an audit trail which will permit tracing transactions from the invoices to the financial statement, to the accounting records, and to the supporting documentation for the purpose of determining compliance with Section 10115 *et seq.* of the California Public Contract Code, Section 8546.7 of the California Government Code, and Title 2, Division 2, Chapter 3, Subchapter 10.5 Section 1896.60 *et seq.* of the CCR (as applicable).

Participating County shall maintain all records for the period set forth in the PDCA (“**Record Maintenance Period**”). 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 Participating County records shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the BSCC or designees, the Agencies, and by state government auditors or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the Record Maintenance Period, the records must be retained until the completion of the action and resolution of all issues which arise from it or until the end of the Record Maintenance Period, whichever is later.

ARTICLE 6. ACCOUNTING AND AUDIT REQUIREMENTS

All funds received by the Participating County shall be deposited into separate fund accounts which identify the funds and clearly show the manner of their disposition. Participating County agrees that the audit and accounting procedures shall be in accordance with generally accepted government accounting principles and practices (see Accounting Standards and Procedures for Counties, California State Controller, Division of Local Government Fiscal Affairs) and adequate supporting documentation shall be maintained in such detail so as to provide an audit trail which will permit tracing transactions from support documentation to the accounting records to the financial reports and billings. Participating County further agrees to the following audit requirements:

A. Pre-payment Audit. Prior to the deposit of State Financing into the separate account, the BSCC may require the Participating County to have a system audit performed by an auditor satisfactory to the BSCC to insure that the Participating County’s accounting system meets generally accepted government accounting principles;

B. Interim Audit. The BSCC reserves the right to call for a program audit or a system audit at any time between the execution of this Agreement and the completion or termination of the Project. At any time, the BSCC may disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action determined to be not in compliance with the terms and conditions of this Agreement, or take other remedies legally available; and,

C. Final Audit. Within ninety (90) calendar days of Final Completion, the Participating County must obtain and submit a final program audit to the BSCC (see Construction Financing Program Agreement Administration and Audit Guide). The audit shall be prepared in accordance with generally accepted auditing standards and government auditing standards for financial and compliance audits. The audit may be performed by the Participating County subject to the terms hereinafter described, or the Participating County may hire, at Participating County cost, an independent auditor to complete the final audit. Participating County should obtain assurances that the personnel selected to perform the audit collectively have the necessary skills. It is important that a sound procurement practice be followed when contracting for audit services. Sound contract and approval procedures, including the monitoring of contract performance, should be in place. The objectives and scope of the audit should be

made clear. In addition to price, other factors to be considered include: the responsiveness of the bidder to the request for proposal; the past experience of the bidder; availability of bidder staff with professional qualifications and technical abilities; and whether the bidder organization participates in an external quality control review program. It should be noted that these steps are important whether the Participating County is hiring auditors from an outside CPA firm or within its own internal auditing unit.

Since the audit function must maintain organizational independence, the County Financial Officer for this Project shall not perform audits of the contract-related activities. If the Participating County internal auditor performs the audit, the auditor must be organizationally independent from the Participating County's accounting and project management functions. Additionally, Participating County internal auditors who report to the Project Financial Officer, or to whom the Project Financial Officer reports, shall not perform the audit. The person conducting the audit shall be a certified public accountant, unless a Participating County auditor completes the audit. Failure to comply with these qualifications standards could result in the rejection of the audit report.

At any time, the BSCC may disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action determined to be not in compliance with the terms and conditions of this Agreement, or take other remedies legally available.

The BSCC reserves the right to have an audit conducted (at the BSCC's expense) at any time between execution of the Agreement up to and including the final audit of the Project.

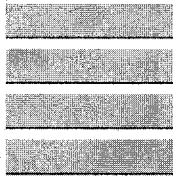
ARTICLE 7. REPORTS

Participating County agrees to submit fiscal invoices and progress/final reports in a format specified by the BSCC, and at mutually agreed upon intervals as defined below, during the period of the Agreement. Reports are due to the BSCC even if State Financing is not expended or requested in the reporting period. Not submitting invoices and progress/final reports in a timely manner may result in disbursements being withheld. In addition, Participating County shall immediately advise the BSCC of any significant problems or changes arising during the course of the Project.

Without limitation of the foregoing, the following reports are required:

A. Fiscal Invoice and Progress/Final Report. Participating County agrees to submit fiscal invoices and progress/final reports to the BSCC on the appropriate form provided to the Participating County during the term of this Agreement and shall do so on a regular schedule of either monthly, bi-monthly or quarterly. The reports shall include, but not be limited to, Project construction activities, change orders issued, problems identified, assistance needed, state funds and match expenditures made, State Financing received, and State Financing requested.

Invoicing/progress reporting interval: The [indicate interval] fiscal and progress/final report must be submitted within forty-five (45) calendar days after the end of [indicate interval]. The due dates for the invoices and progress reports are no later than:



B. Final Fiscal Invoice and Project Summary. Participating County agrees to submit to the BSCC a Final Fiscal Invoice and Project Summary on the appropriate form provided to the Participating County within forty-five (45) calendar days of the scheduled construction completion date identified in Exhibit B. The report shall include, but not be limited to, total state funds and match expenditures made by budget division, total State Financing received, remaining State Financing requested, number of BSCC-rated beds added and modified, number of special use beds added and modified, and a detailed description of the finished Project including pre-construction and post-construction photographs or other visual material suitable for public distribution. For purposes of this Exhibit A, “**BSCC-rated beds**” means the number of beds dedicated to housing adult offenders for which a facility’s single- and double-occupancy cells/rooms or dormitories were planned and designed in conformity to the standards and requirements contained in Titles 15 and 24 of the CCR. “**Special use beds**” means beds for the purpose of appropriately housing offenders in medical, mental health, or disciplinary rooms, cells or units that are planned and designed in conformity to the standards and requirements contained in Titles 15 and 24 of the CCR.

ARTICLE 8. WITHHOLDING OF STATE DISBURSEMENTS

A. BSCC may withhold all or any portion of the State Financing provided for by this Agreement in the event that:

1. Participating County Breach of Agreement. Participating County has materially and substantially breached the terms and conditions of this Agreement or any other Project Document.
2. Insufficient County Funds. Participating County is unable to demonstrate, to the satisfaction of the BSCC’s Executive Director, continuous availability of sufficient funds to complete the Project.
3. Insufficient Match Disbursement. Participating County has not expended its Cash (hard) Match requirement on a schedule that is at least pro-rata with the percentage expenditure of, collectively, interim financing and lease-revenue bond funds.

B. In the event that State Financing is withheld from the Participating County, the BSCC’s Executive Director or designee shall notify the Participating County of the reasons for withholding and advise the Participating County of the time within which the Participating County may remedy the failure or violation leading to the withholding.

The BSCC will not reimburse counties for costs identified as ineligible for State Financing. If State Financing has been provided for costs subsequently discovered to be ineligible, the BSCC may either withhold an equal amount from subsequent payments to the

Participating County or require repayment of an equal amount to the State by the Participating County. Any State Financing so remitted to the BSCC may be subject to interest equal to the rate earned by the State Pooled Money Investment Account.

ARTICLE 9. DISBURSEMENT

Participating County shall be paid in arrears on invoices of expenditures and requests for funds submitted to BSCC at mutually agreed upon intervals, see Article 7(A), on the Fiscal Invoice and Progress/Final Report. Participating County shall supply BSCC with appropriate expenditure documentation and request for funds on form(s) provided by BSCC and certify to the accuracy of the report(s) in accordance with generally accepted governmental accounting principles and BSCC regulations, guidelines, policies and procedures. Participating County shall further certify that all listed expenditures are actual and that all funds were expended for the purpose of liquidating obligations identified in Exhibit B and legally incurred.

The State will issue a warrant for eligible funds within approximately thirty (30) to sixty (60) days of receipt of Participating County invoice and documentation of eligible expenditures. All requests for payment shall be accompanied by any documentation as may be required by BSCC or the Board and with such certification(s) as may be required by BSCC.

ARTICLE 10. DISPUTES

Participating County shall continue with the responsibilities under this Agreement during any disputes. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under, or relating to, the performance of this Agreement which is not resolved by agreement between Participating County and BSCC staff shall be decided by the BSCC. This clause does not preclude consideration of legal questions; nothing in this Agreement shall be construed as making final the decision of any administrative official, representative, or BSCC on a question of law.

Participating County may appeal on the basis of alleged misapplication, capricious enforcement of regulations, or substantial differences of opinion as may occur concerning the proper application of regulations or procedures. Such appeal shall be filed within thirty (30) calendar days of the notification of the action with which the Participating County is dissatisfied. The request shall be in writing stating the basis for the dissatisfaction and the action being requested of the BSCC.

A hearing shall be conducted by a hearing panel designated by the Chairperson of the BSCC Board at a reasonable time, date, and place, but not later than twenty-one (21) calendar days after the filing of the request for hearing with BSCC, unless delayed for good cause. BSCC shall mail or deliver to the appellant or authorized representative a written notice of the time and place of hearing not less than fourteen (14) calendar days prior to the hearing. The procedural time requirements may be waived with mutual written consent of the parties involved.

Appeal hearing matters shall be set for hearing, heard, and disposed of by a notice of decision by the BSCC Board within ninety (90) calendar days from the date of the request for appeal hearing, except in those cases where the appellant withdraws or abandons the request for hearing or the matter is continued for what is determined by the hearing panel to be good cause.

An appellant may waive a personal hearing before the hearing panel and under such circumstances, the hearing panel shall consider the written information submitted by the appellant and other relevant information as may be deemed appropriate.

The hearing is not formal in nature. Pertinent and relevant information, whether written or oral, will be accepted. Hearings will be tape recorded. After the hearing has been completed, the hearing panel shall submit an advisory recommendation on the matter to the BSCC Board. The decision of the BSCC Board shall be final.

Notwithstanding any other provision of this Article 10, this Article 10 shall not limit any other rights or remedies available to the State or any other Agency under any other Project Document including, without limitation, the PDCA.

ARTICLE 11. REMEDIES

Participating County agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the BSCC as a result of breach of this Agreement by the Participating County, whether such breach occurs before or after completion of the Project. In the event of litigation between the Parties hereto arising from this Agreement, it is agreed that the prevailing Party shall be entitled to such reasonable costs and/or attorney fees and costs as may be ordered within the discretion of the Court.

ARTICLE 12. 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.

FORM OF DOCUMENT

EXHIBIT B

PROJECT DESCRIPTION AND BUDGET

Capitalized terms not defined in this Exhibit B shall have the meaning as set forth in the Agreement to which this Exhibit B is attached.

County (County):

Name of Facility Subject to Construction:

SECTION 1. PROJECT DESCRIPTION

Provide a description of the Project scope as presented in Exhibit A of the PDCA.

SECTION 2. PROJECT TIMETABLE

Provide an updated Project timetable to include start and completion dates for each of the following key events: 1) Schematic Design and Operational Program Statement; 2) Design Development with Staffing Plan; 3) Staffing/Operating Cost Analysis; 4) Construction Documents; 5) Construction Bids; 6) Notice to Proceed; 7) Construction; and 8) Occupancy. Note that construction should be substantially complete within three (3) years from Notice to Proceed and occupancy must occur within ninety (90) days of Final Completion.

SECTION 3. CONSTRUCTION MANAGEMENT PLAN

Provide a general outline of the construction management plan, including methods to monitor/control the Project and ensure a successful, on schedule completion:

SECTION 4. KEY PERSONNEL

Provide a listing of the names, titles, and roles of key construction and management personnel:

SECTION 5. BUDGET CLASSIFICATION SCHEDULES

In a format acceptable to BSCC, provide budget categories for State Financing, Cash (hard) Match and In-kind (soft) Match.

Location of Site
Agency: [Department of Corrections and Rehabilitation of the State of California] Real Property:

**RIGHT OF ENTRY FOR
CONSTRUCTION AND OPERATION**

This RIGHT OF ENTRY FOR CONSTRUCTION AND OPERATION AGREEMENT (this "License") is entered into as of _____, 20 __, by and between 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 of California (the "State"), as licensor, and the COUNTY OF [ENTER COUNTY NAME] (the "Participating County"), a political subdivision of the State of California, as licensee. The Department and the Participating County are sometimes individually referred to as "Party" and collectively as "Parties".

RECITALS

WHEREAS, pursuant to [ENTER STATUTE] of the California Government Code, 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 STATUTE] of the California Government Code (the "[ENTER PROGRAM NAME] Financing Program"); and

WHEREAS, the Participating County has proposed to build a jail facility, the _____ 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, contemporaneous with entry into this License, Participating County intends to lease the Site to the Department pursuant to a Ground Lease executed by and between the Participating County and the Department and consented to by the Board (the "Ground Lease"); and

WHEREAS, the Department, as lessee under the Ground Lease intends to provide the Participating County access to the Site for the purpose of jail construction-related activities and for operation of the Project upon substantial completion of construction.

WITNESSETH

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements by the Parties set forth herein and other good and valuable consideration, this License is subject to the following terms and conditions:

1. Grant of License – The Department hereby grants to the Participating County, its employees, consultants, representatives and contractors a non-exclusive, temporary license to enter the Site for site analysis, Project construction-related activities, and for operation of the Project upon substantial completion of construction (“Activities”), all as contemplated by that certain Project Delivery and Construction Agreement by and among the Department, the Board, the BSCC and the Participating County (the “PDCA”). This License is subordinate to all prior or future rights and obligations of the Department and the Board in the Site, except that the Department and the Board shall grant no rights inconsistent with the reasonable exercise by the Participating County of its rights under this License.
2. License Term – This License shall commence on the Effective Date of the Ground Lease and shall terminate on the date of termination of the PDCA (the “Term”).
3. Compliance with Laws – The Participating County shall conduct all Activities in compliance with all Federal, State and municipal statutes and ordinances, and with all regulations, orders and directives of appropriate governmental agencies (“Laws and Regulations”), as such Laws and Regulations exist during the Term of this License.
4. Inspections – The Department, the Board, and their representatives, employees, agents or independent contractors may enter and inspect the Site or any portion thereof or any improvements thereon, and the Project at any time and from time to time at reasonable times to verify the Participating County’s compliance with the terms and conditions of this License.
5. Special Condition – In the performance of the required studies and tests, the Participating County acknowledges that the Participating County will practice all due diligence to protect the Site.
6. Cooperation – In the event the Department or the Board has business on the Site or the Project, the Participating County agrees to coordinate the Activities with the Department or the Board to minimize any impairment of access to the Site or the Project and any inconvenience to or disruption of the Department’s or the Board’s business. Department and Board agree to coordinate their business at the Site or the Project so as to minimize any delay or disruption of the Participating County’s Activities.
7. Indemnity – As required by California Government Code Section [ENTER STATUTE] the Participating County hereby agrees that it shall indemnify, defend and save harmless the State, including but not limited to the Board, CDCR and 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 out of the acquisition, design, construction, and operation of the Project, including, but not limited to all demands, causes of actions and liabilities of every kind and nature whatsoever arising out of, related to, or in connection with (a) any breach of this License by the Participating County; (b) operation, maintenance, use and occupancy of the Project; (c) any acts or omissions of any contractor hired by the Participating

County or its agents or subcontractor hired by such contractor; and (d) personal injury, bodily injury or property damage resulting from the Activities of the Participating County, its employees, consultants, representatives and contractors (collectively, "Claims"). The Participating County's obligation to indemnify, defend and save harmless the Indemnitees shall extend to all Claims arising, occurring, alleged, or made at any time, including prior to, during, or after the period that this License is in full force and effect. The Participating County shall not be obligated to provide indemnity or defense for an Indemnitee where the claim arises out of the active negligence or willful misconduct of the Indemnitee. The indemnification obligations of the Participating County set forth in this Section shall survive any termination of this License.

8. Insurance – The Participating County shall maintain the following insurances: 1) Commercial General Liability with limits of no less than one million dollars (\$1,000,000) per occurrence and Fire Legal Liability of no less than five hundred thousand dollars (\$500,000); 2) Automobile Liability with a combined single limit of no less than one million dollars (\$1,000,000) per accident and 3) Workers Compensation as required by law and Employers Liability with limits of no less than one million dollars (\$1,000,000) per occurrence. The Participating County shall be solely responsible for monitoring and ensuring that the necessary Workers Compensation Insurance is in effect for all persons entering onto the Site.
9. Utilities – The Department makes no guarantee as to the reliability or availability of utility services. The Department shall not supply any utility services to the Site or the Project.
10. Taxes and Assessments – It is expressly understood that this License is not exclusive and does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Site or the Project to the Participating County. Any such acquisition of use rights shall be separate agreements at the sole discretion of the Department and the Board. Should taxes or assessments be levied upon any interest in this License, the Participating County agrees to pay all lawful taxes, assessments or charges created by this License. It is understood that this License may create a possessory interest subject to property taxation and the Participating County may be subject to the payment of property taxes levied on such interest.
11. Continuing Liability – No termination of this License shall release the Participating County from any liability or obligations hereunder resulting from any acts, omissions or events happening prior to the termination of this License and restoration of the Site to its prior condition.
12. Attorneys' Fees – In the event of a dispute between the Parties with respect to the terms or condition of this License, it is agreed that each Party, including the prevailing Party, must bear its own costs and attorneys' fees.
13. Assignment, Subletting and Change in Use – The Participating County shall not transfer or assign this License and shall not sublet, license, permit or suffer any use of the Site or the Project or any part thereof.

14. Notices –

- a. All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service), sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.
- b. All such notices or other communications shall be deemed received upon the earlier of 1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notices or 2) if mailed as provided above, on the date of receipt or rejection.

[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]

To the Board: State Public Works Board
915 L Street, 9th Floor
Sacramento, CA 95814
Attention: Executive Director
Facsimile: 916-449-5739

To the Participating County: _____ [County Name]
_____ [Address 1]
_____ [Address 2]
Attention: _____
Facsimile: _____

- c. Notice of change of address or telephone number shall be given by written notice in the manner described in this Paragraph. The Participating County is obligated to notice all State offices listed above and the failure to provide notice to all State offices will be deemed to constitute a lack of notice.

15. Entire Agreement – This License contains all the agreements of the Parties regarding right of entry for construction and supersedes any prior License or negotiations. There have been no representations by the Department or understandings made between the Department and the Participating County regarding right of entry for construction and operation other than those set forth in this License. This License may not be modified except by a written instrument duly executed by the Parties hereto with the consent of the Board.

16. Counterparts – This License may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this License by their duly authorized representatives on the date first above written.

THE COUNTY _____

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

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

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

**APPROVED: DEPARTMENT OF
GENERAL SERVICES OF THE
STATE OF CALIFORNIA**
(Pursuant to Government Code Section 11005)

By: _____
Name: _____
Title: _____