File No. 130973

Committee Item No. 7
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: Victor Young **Date** October 4, 2013
Completed by: Victor Young **Date** _____

[Grant Application - Sheriff's Department - Construction of Adult Local Criminal Justice Facilities]

Resolution authorizing the Sheriff's Department to submit a grant application to the Board of State and Community Corrections, pursuant to California State Senate Bill 1022 (2012), for a proposed project to replace County Jail No. 3 and County Jail No. 4 and to seek funding preference for such application; declaring the availability and adequacy of $8,900,000 in cash contribution funds for the proposed project; and conditionally approving the form and execution of associated grant financing and construction documents.

WHEREAS, Under Senate Bill 1022, Chapter 42, Statutes of 2012 ("SB 1022"), the State of California authorized the Board of State and Community Corrections ("BSCC"), the California State Public Works Board ("SPWB"), and participating counties to acquire, design and construct adult local criminal justice facilities approved by the BSCC; and

WHEREAS, SB 1022 authorized the SPWB to issue up to $500,000,000 in revenue bonds to finance the acquisition, design, renovate, and construction of approved adult local criminal justice facilities; and

WHEREAS, On July 23, 2013, the BSCC issued a Request for Proposals for Construction of Adult Local Criminal Justice Facilities ("SB 1022 RFP"), a copy of which is on file with the Clerk of the Board of Supervisors in File No. 130973, and is incorporated herein by reference; and

WHEREAS, In 1992, the City and County of San Francisco ("City") developed Seismic Hazard Ratings for over 200 of its public buildings on a scale from one to four, with four representing the most seismically deficient, and City's Hall of Justice building at 850 Bryant Street ("HOJ") is a seismically deficient building that received a rating of three; and

WHEREAS, The HOJ contains County Jail #3 and County Jail #4, which have a combined total of 905 (826 rated) bed facilities; and

WHEREAS, If the HOJ sustains significant damage due a major seismic event, the estimated cost to relocate and transport inmates housed in County Jail #3 and County Jail #4 is estimated to be tens of millions of dollars, and replacing County Jail #3 and County Jail #4 has been a high priority of the City's Ten-Year Capital Plan since its inception in 2006; and

WHEREAS, The replacement of County Jail #3 and County Jail #4 with a new jail facility adjacent to HOJ (the "Proposed Facility") is estimated to cost $290,000,000, and if the City receives a grant of SB 1022 funds for the Proposed Facility, the total cost to the City to construct the Proposed Facility would be substantially offset by such awarded funds; and

WHEREAS, Applying for a grant of SB 1022 funds requires the City to submit an Applicant's Agreement in substantially the form on file with the Clerk of the Board of Supervisors in File No. 130973 ("Applicant's Agreement"), which is incorporated herein by reference; and

WHEREAS, The City is qualified to receive up to $80,000,000 of SB 1022 funds through the SB 1022 RFP, which amount would require a matching City contribution of $8,900,000 ("City's Cash Contribution"); and

WHEREAS, Under budgets adopted by this Board of Supervisors for Fiscal Years 2012 through 2015, $11,190,000 was appropriated to the City's Sheriff's Department through the capital budget for replacement of County Jail #3 and County Jail #4, and the City's Cash Contribution for any SB 1022 grant made through the SB 1022 RFP would be paid with such appropriated funds; and

WHEREAS, The City would use the City's Cash Contribution to pay for preliminary designs, studies, environmental review and analysis, and preliminary project management for the Proposed Facility; and

WHEREAS, The City can seek a funding preference for a SB 1022 grant if its submitted application includes a resolution that is adopted by this Board of Supervisors and certifies City's Cash Contribution has been duly authorized and is lawfully available, and a September 27, 2013, letter from the City's Controller that confirms such matters (Controller's Findings) is on file with the Clerk of the Board of Supervisors in File No. 130973 and is incorporated herein by reference; and

WHEREAS, The City can seek funding preference for a SB 1022 grant if its submitted application includes a complete initial real estate due diligence package, and the Sheriff's Department intends to submit such a package; and

WHEREAS, The City can seek a funding preference for a SB 1022 grant if its submitted application includes a resolution that is adopted by this Board of Supervisors that authorizes the execution of a Project Delivery and Construction Agreement, a BSCC Jail Construction Agreement, a Ground Lease, a Right of Entry for Construction and Operation, and a Facility Sublease in substantially the forms on file with the Clerk of the Board of Supervisors in File No. 130973 (the "Grant Documents"), and the Grant Documents are hereby declared to be a part of this resolution as if set forth fully herein; and,

WHEREAS, The SB 1022 RFP specifies that any county applying for a SB 1022 grant must designate the construction administrator for the Proposed Facility, and City's construction administrator for the Proposed Facility will be Jim Buker, Senior Architect for City's Department of Public Works (DPW), Building Design & Construction (BDC) - Project Management, or any other person designated by the Director of DPW; and

WHEREAS, The SB 1022 RFP specifies that any county applying for a SB 1022 grant must designate the project contact person for the Proposed Facility, and City's project contact persons for the Proposed Facility will be Jim Buker, Senior Architect for City's Department of Public Works (DPW), Building Design & Construction (BDC) - Project Management, or any

other person designated by the Director of DPW, and Undersheriff Ellen Brin, Sheriff's Department, or any other person designated by the City's Sheriff; and

WHEREAS, The SB 1022 RFP specifies that any county applying for a SB 1022 grant must designate the financial officer for the Proposed Facility, and City's financial officers for the Proposed Facility will be Bree Mawhorter, Chief Financial Officer of City's Sheriff's Department, or any other person designated by the City's Sheriff, and Jim Buker, Senior Architect for City's Department of Public Works (DPW), Building Design & Construction (BDC) - Project Management, or any other person designated by the Director of DPW; and

WHEREAS, The City is required to, and will, undertake environmental review under the California Environmental Quality Act of the Proposed Facility as its project components are better defined, and will work with all interested parties, City staff, experts and the public to develop a thorough environmental analysis that will inform the design, development and operation of the Proposed Facility; and

WHEREAS, The City retains discretion to: (1) modify the Proposed Facility to mitigate significant adverse environmental impacts; (2) select feasible alternatives that avoid significant adverse impacts of the Proposed Facility; (3) implement specific measures to mitigate the significant adverse environmental impacts of the Proposed Facility; (4) reject the Proposed Facility as proposed if its economic and social benefits do not outweigh otherwise unavoidable significant adverse impacts of the Proposed Facility; or (5) approve the Proposed Facility upon a finding that the economic and social benefits of the Proposed Facility outweigh otherwise unavoidable significant adverse impacts; now, therefore, be it

RESOLVED, The City is authorized to submit an application for an $80,000,000 grant of SB 1022 funds in response to the SB 1022 RFP and to seek funding preference for the Proposed Facility within the SB 1022 financing program; and, be it

FURTHER RESOLVED, The Director of DPW is authorized to execute and submit the Applicant's Agreement to the BSCC; and, be it

FURTHER RESOLVED, If City is conditionally awarded a SB 1022 grant, the City's Cash Contribution will be used to pay for preliminary designs, studies, environmental review and analysis, and preliminary project management for the Proposed Facility; and, be it

FURTHER RESOLVED, That this Board of Supervisors hereby adopts the Controller's Findings to represent, warrant and covenant as follows:

(1) The City's Cash Contribution will be derived exclusively from City's lawfully available funds;

(2) Payment of the City's Cash Contribution to pay for the design or construction of the Proposed Facility (i) is within the power, legal right, and authority of City, (ii) is legal and will not conflict with or constitute on the part of the City a material violation of, a material breach of, a material default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance upon any property of the City under the provisions of any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, installment sale agreement, contract, or other material agreement or instrument to which the City is party or by which the City or its properties or funds are otherwise subject or bound, decree, or demand of any court or governmental agency or body having jurisdiction over the City or any of its activities, properties or funds, and (iii) has been duly authorized by this Board of Supervisors;

(3) Except as otherwise approved in advance by the BSCC, the City's Cash Contribution and the Proposed Facility have not been and will not be (i) mortgaged, pledge, or hypothecated by the City in any manner or for any purpose, (ii) the subject of a grant of a security interest by the City, (iii) mortgaged, pledged or hypothecated for the benefit of the

City or its creditors in any manner or for any purpose, or (iv) the subject of a grant of a security interest in favor of the City or its creditors;

(4) The City shall not in any manner impair, impede or challenge the security, rights and benefits of the owners of any lease-revenue bonds sold by the SPWB to finance the SB 1022 grant for the Proposed Facility (State Bonds) or the trustee for the State Bonds; and, be it

FURTHER RESOLVED, If, following all required environmental review, this Board of Supervisors elects to proceed with the Proposed Facility, the City will be authorized to proceed with the Proposed Facility if City is awarded with an SB 1022 grant for the Proposed Facility and the City accepts such grant, acquires the real property necessary for the Proposed Facility, and obtains sufficient funding for the development and construction of the Proposed Facility (the "Acceptance Conditions"); and, be it

FURTHER RESOLVED, The City is seeking funding preference for its SB 1022 grant application associated with review of and authorization to execute the Grant Documents, and this Board of Supervisors does hereby approve the form of the Grant Documents; and, be it

FURTHER RESOLVED, If this Board of Supervisors elects to proceed with the Proposed Facility following all required environmental review and the Acceptance Conditions are fully satisfied, the following persons (collectively, the "Authorized Officers"), will be authorized to execute the Grant Documents as specified below for and in the name of the City at such time and in such manner as is required for the awarded SB 1022 grant, modified as may be necessary for a design-build project, with such additions thereto and changes therein as are required by the BSCC or the SPWB to effectuate the financing program for the SB 1022 grant and as condition to the issuance of the Bonds, if the applicable Authorized Officers, determine, in consultation with the City Attorney, such changes are in the best interest of the City, do not materially increase the obligations or liabilities of the City, are

necessary or advisable to effectuate the purposes of the Grant Documents or this Resolution, and are in compliance with all applicable laws, including the City's Charter, and approval of such changes shall be conclusively evidenced by the execution and delivery thereof by the applicable Authorized Officers, with (i) City's Director of Property or his or her designee, acting alone, authorized to sign the Ground Lease, (ii) City's Director of Property or his or her designee, and City's Sheriff or his or her designee, acting together, authorized to sign the Right of Entry for Construction and Operation and the Facilities Sublease on behalf of the City, (iii) City's Controller or his or her designee, City's Sheriff or his or her designee, and the Director of DPW or his or her designee, acting together, authorized to sign the BSCC Jail Construction Agreement, and (iv) City's Controller or his or her designee, and City's Sheriff or his or her designee, acting together and with the recommendation of the Director of DPW or his or her designee, authorized to sign the Project Delivery and Construction Agreement; and, be it

FURTHER RESOLVED, That if the City is awarded a grant of SB 1022 funds, the City elects to proceed with the Proposed Facility and the Acceptance Conditions are fully satisfied, the City shall (i) adhere to state requirements and terms of agreement between the City, the BSCC, and the SPWB in the expenditure of such grant and the City's Cash Contribution, and (ii) safely staff and operate the Proposed Facility, should it be constructed, within 90 days after substantial completion of construction of the Proposed Facility, and (iii) not lease housing capacity in the Proposed Facility to any other public or private entity for a period of ten years beyond the completion of construction of the Proposed Facility.

Item 7 File 13-0973	Department: City's Administrator's Office Department of Public Works

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the City to: (1) submit a grant application to the Board of State and Community Corrections (BSCC) for $80,000,000 in state revenue bonds under SB 1022 to fund the construction of a proposed jail facility to replace County Jail #3 and County Jail #4; and (2) seek funding preference for the awarding of the grant funds.

Key Points

- Under SB 1022, the City is eligible to request up to $80,000,000 in state grant funds to finance the acquisition, design and construction of an adult local criminal justice facility. SB 1022 requires that funding preference be given to counties that are most prepared to proceed with proposed projects in a timely manner.
- Replacement of County Jail #3 and County Jail #4 at the Hall of Justice has been a high priority in the City's 10-Year Capital Plan since the first Capital Plan was issued in 2006. The 2014-2023 Capital Plan recommends the construction of a replacement jail estimated to cost $290,000,000 on adjacent property east of the current Hall of Justice, to be completed in 2019.
- Under the 2014-2023 Capital Plan, construction of the proposed replacement jail would be financed by the issuance of approximately $290,000,000 in Certificates of Participation starting in FY 2016-17. In addition, the Board of Supervisors has appropriated $11,190,000 from the City's General Fund from FY 2011-12 to FY 2014-15 for architectural, engineering, and project management services related to the planning of the project.
- The proposed resolution would authorize the City to: (1) submit a grant application to BSCC for $80,000,000 in state revenue bonds to fund the construction of the proposed replacement jail; and (2) seek funding preference for the awarding of the grant funds.

Fiscal Impact

- If the City is awarded the requested grant amount of $80,000,000, it would offset $80,000,000 of the estimated $290,000,000 cost of developing and constructing the proposed jail.

Policy Considerations

- The proposed resolution does not meet the RFP funding preference requirement that the proposed project be authorized to proceed in its entirety when and if SB 1022 grant funds are awarded. Rather, the proposed resolution states that such authorization will only be granted if the Board of Supervisors elects to proceed with the project after all required environmental review is completed, and if the City is awarded the SB 1022 grant, acquires the real property necessary for the proposed replacement jail and obtains sufficient funding for the development and construction of the proposed replacement jail. As such, the proposed resolution does not commit the City to constructing the proposed replacement jail, but it does move forward the proposed acquisition of property necessary for the replacement jail.

Recommendation

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

The Senate Bill (SB) 1022 Request for Proposals (RFP) issued by the California Board of State and Community Corrections (BSCC) on July 23, 2013 requires all counties applying for grant funds under SB 1022 to include a Board of Supervisors' resolution with the county's proposal. The Board of Supervisors' resolution must contain certain designations, authorizations and assurances specified in the RFP, and, if counties seek funding preference for the awarding of the grant funds, the resolution must include additional resolution language specified in the RFP.

Background

The SB 1022 RFP Process

SB 1022, signed by Governor Brown on June 27, 2012, authorizes the State Public Works Board to issue up to $500,000,000 in revenue bonds, notes, or bond anticipation notes[1] to finance the acquisition, design and construction of adult local criminal justice facilities.[2] Under the RFP issued on July 23, 2013, counties with more than 700,000 residents are eligible to request up to $80,000,000 or up to 90% of the estimated project costs, whichever is less, of the available SB 1022 funding. Except for these maximum state funding limits, the state has no overall limit on the total cost of an eligible county project. Unless a county is proposing a regional facility, counties may only request funding for one facility.

Funding Preference

SB 1022 requires that funding preference be given to counties that are most prepared to proceed with proposed projects in a timely manner, and that determination of preparedness must include, but need not be limited to, the availability of matching funds authorized by the county Board of Supervisors. Meeting the funding preference criteria for project preparedness is not required in order to be awarded grant funds; however, projects that satisfy the preference criteria for project preparedness will be awarded first, as stated in the RFP. The RFP establishes four funding preference criteria related to the preparedness of the proposed project:

1. Commitment of adequate county contribution of funds, including Board of Supervisors' resolution language authorizing the project to proceed in its entirety when and if SB 1022 grant funds are awarded (mandatory criterion for funding preference);
2. Initial real estate due diligence package;
3. Documentation evidencing California Environmental Quality Act (CEQA) compliance has been completed; and
4. Review of and authorization to execute the financing program Project Documents.

[1] Bond anticipation notes are short-term securities issued in advance of a larger, future bond issue.

[2] Under SB 1022, an "adult local criminal justice facility" may include any custodial housing, reentry, program, mental health, or treatment space necessary to manage the adult offender population.

Project Ranking

As stated in the RFP, the order of awards to counties will be determined first by the number of above listed funding preference criteria that are fully satisfied, and then by the ranking of projects, irrespective of the funding preference criteria, based on:

1. Project need,
2. Scope of work,
3. Offender management and programming,
4. Administrative work plan, and
5. Budget review.

The deadline for proposal submittal is October 23, 2013.

The Hall of Justice Replacement Program

The San Francisco Sheriff's Department operates six jails in San Francisco and San Mateo County. Two of the jails, County Jail #3 and County #4 are located on the sixth and seventh floors respectively of the Hall of Justice (HOJ) at 850 Bryant Street, which also houses the Superior Court, Police Headquarters, the District Attorney's office, the Adult Probation Department, and other City agencies. County Jail #3 and County Jail #4 have a combined total of 905 (826 rated) beds.[3]

Constructed in 1958, the HOJ has been found to be highly susceptible to severe structural and non-structural damage that could pose "appreciable life hazard to occupants" in the event of an earthquake, although the risk of collapse has been found to be moderately low. In addition, repairs to the damage would require the building to be vacated or would not be economically feasible. Engineering consultants evaluated several alternatives for seismically retrofitting the HOJ, but found that each option would require a major reconfiguration of the building space and/or significant costs.[4]

In response to the HOJ's seismic deficiency, the City undertook a planning effort from 2006 to 2009 that resulted in the Justice Facilities Improvement Program, a $1.5 billion capital program to replace the HOJ, which the City has since commenced. In June 2010, the voters approved the first Earthquake Safety and Emergency Response (ESER) General Obligation Bond, from which proceeds are currently being used to fund the construction of a new Public Safety Building at 3rd Street and Mission Rock. Slated for completion in fall 2014, the Public Safety Building will house the Police Command Center and Southern District Station currently housed in the HOJ.

The City's 2014-2023 Capital Plan proposes a second ESER General Obligation Bond, scheduled for the June 2014 ballot, of which a portion of the bond proceeds would fund the construction of seismically sound facilities for two offices currently located at the HOJ: (1) the Medical Examiner's Office, which would be relocated to 1 Newhall Street, and (2) the Police Department's Traffic Company and part of its Forensics Services Divisions, which would be potentially relocated to 1995 Evan Street, pending completion of due diligence reviews and

[3] The number of "rated" beds is the maximum number of beds or inmates that may be housed in a jail as established by state or local rating officials.

[4] *County Jail Needs Assessment, Hall of Justice Replacement Jail,* Office of the Controller, City Services Auditor, August 15, 2013.

other matters. In addition, the Capital Plan recommends the relocation of the District Attorney and Adult Probation Department from the HOJ to an as yet undetermined nearby location, to be financed by $235 million in Certificates of Participation that would be issued in FY 2021-22.

Although the City intends to relocate all of its facilities from the HOJ, the Superior Court is anticipated to remain at the east wing of the HOJ indefinitely. After the City relocates its facilities to other locations and the west wing of the HOJ is demolished, the Superior Court may use the vacant land to construct a new, seismically sound building. In any event, proximity to the Superior Court, which is anticipated to remain at 850 Bryant Street indefinitely, is a criterion in the selection of a location for the replacement of County Jails #3 and #4.

Replacement of County Jail #3 and County Jail #4

According to Mr. Brian Strong, Director of the Capital Planning Program, replacement of County Jail #3 and County Jail #4 has been a high priority in the City's 10-Year Capital Plan since the first Capital Plan was issued in 2006. In response to the City's historically low inmate population and uncertainty about the impact of State Public Safety Realignment, the 2014-2023 Capital Plan recommends a two-phased approach to replacing County Jails #3 and #4. The first phase is the construction of a replacement jail estimated to cost $290,000,000 on adjacent property east of the current HOJ.[5] The second phase would add an additional jail on the same property if future forecasts indicate the inmate population is likely to increase beyond current forecasts. In the event a second jail is determined to be unnecessary, the 2014-2023 Capital Plan recommends relocating the District Attorney and Adult Probation Department (discussed above) to the remaining unused space on the proposed adjacent property.

Although the City's inmate population is at an historical low, the Controller's Office forecasts the need for a replacement jail in 2019 (the tentative completion date of a replacement jail) containing between 481 and 688 beds to replace the 905 beds in County Jails #3 and #4.[6]

According to Mr. Jim Buker, Senior Architect at the Department of Public Works (DPW), construction of the proposed replacement jail would commence in January 2017 and would be completed in December 2019. The estimated costs to construct the proposed replacement jail are shown in Table 1 below.

[5] The adjacent property east of the current HOJ contains seven lots at the addresses 444, 450, 470 and 482 6th Street, and 804, 814-820, and 820 Bryant Street (Real Estate Division).

[6] *County Jail Needs Assessment, Hall of Justice Replacement Jail,* Office of the Controller, City Services Auditor, August 15, 2013. The 2012-2021 Capital Plan's proposal for a replacement jail for County Jails #3 and #4 included one-to-one bed replacement, while the 2014-2013 Capital Plan includes less than one-to-one replacement.

Table 1: Estimated Project Costs for the Proposed Replacement Jail

Construction	199,500,000
Project Control [i]	54,900,000
Site Control [ii]	30,700,000
Bond Issuance and Oversight	4,900,000
GRAND TOTAL	**$290,000,000**

Source: Department of Public Works

i. Project control includes architectural and engineering, construction management, and project management services, as well as permits.

ii. Site control includes the cost of purchasing the proposed property, consultant contract expenses related to due diligence, relocation expenses owed to displaced occupants, and demolition.

Under the 2014-2023 Capital Plan, construction of the proposed replacement jail would be financed by the issuance of approximately $290,000,000 in Certificates of Participation starting in FY 2016-17. According to Ms. Nadia Sesay, Director of Public Finance in the Controller's Office, the issuance of $290,000,000 in Certificates of Participation in FY 2016-17 as currently planned would result in annual debt service that does not exceed the City's 3.25% limit on the percentage of discretionary revenue that can be used to fund annual debt service costs.

In addition to the proposed issuance of Certificates of Participation, the Board of Supervisors has appropriated $11,190,000 from the City's General Fund from FY 2011-12 to FY 2014-15 as a continuing project for architectural, engineering, and project management services related to the planning of the project. Mr. Buker advises that $584,790 of the appropriated funds had been expended as of September 12, 2013.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the City to:

- Submit a grant application to BSCC for $80,000,000 in state revenue bonds under SB 1022 to fund the construction of a proposed jail facility to replace County Jail #3 and County Jail #4; and
- Seek funding preference for the awarding of the grant funds.

In support of City's request for funding preference, as required under the SB 1022 RFP, the proposed resolution would:

- Declare the availability of $8,900,000 in required matching funds from funds previously appropriated by the Board of Supervisors for the construction of the proposed replacement jail;
- State that the City is seeking funding preference on the basis of submitting an initial real estate due diligence package; and
- Conditionally approve the Project Documents for the proposed replacement jail and authorize certain officers of the City to execute the Project Documents.

Required Designations, Authorizations and Assurances under the RFP

The RFP issued by BSCC on July 23, 2013 requires all counties applying for grant funds under SB 1022 to include a Board of Supervisors' resolution with the county's proposal submittal that must contain certain designations, authorizations and assurances specified in the RFP. To meet this requirement, the proposed resolution contains following:

- Designation of the project's Construction Administrator, Financial Officer and Contact Person;
- Authorization of the Director of DPW to sign the Applicant's Agreement and submit the proposal for funding;
- Assurance that the City will adhere to state requirements and terms of agreements between the City, BSCC, and the State Public Works Board in the expenditure of any state financing allocation and county contribution funds;
- Assurance that the City will safely staff and operate the proposed facility within 90 days after the project completion;
- Assurance that the City will not lease housing capacity in the proposed facility to any other public or private entity for a period of 10 years beyond the completion date of proposed facility.

Resolution Language Supporting the City's Request for Funding Preference

If counties seek funding preference for the awarding of SB 1022 grant funds, the Board of Supervisors' resolution must include additional resolution language specified in the RFP in support of any of the four funding preference criteria, noted on page 11 above.

The City's application for SB 1022 grant funds seeks funding preference on the basis of satisfying three of the four funding preference criteria including: (1) commitment of adequate county contribution of funds, (2) initial real estate due diligence package, and (3) review of and authorization to execute the financing program Project Documents. The City's application does not seek funding preference on the basis of completing CEQA compliance because the City has not commenced environmental review of the proposed project.

Commitment of Adequate County Contribution of Funds

The proposed resolution declares the availability $8,900,000 in required matching funds from $11,190,000 in funds previously appropriated by the Board of Supervisors for the construction of the proposed replacement jail. The proposed resolution further allocates the use of such funds to pay for preliminary designs, studies, environmental review and analysis, and preliminary project management for the proposed facility.

- *The proposed resolution does not meet the RFP funding preference requirement that the proposed project be authorized to proceed in its entirety*

Fully satisfying the criterion of commitment of adequate matching funds also requires counties seeking funding preference to include a Board of Supervisors' resolution authorizing the proposed project to proceed in its entirety when and if SB 1022 grant funds are awarded. However, the proposed resolution does not grant such authorization. Rather, the proposed resolution states that such authorization will only be granted if the Board of Supervisors elects

to proceed with the project after all required environmental review is completed, and if the City is awarded the SB 1022 grant, acquires the real property necessary for the proposed replacement jail and obtains sufficient funding for the development and construction of the proposed replacement jail.

Initial Real Estate Due Diligence Package

The proposed resolution supports the request for funding preference on the basis of submitting an initial real estate due diligence package by declaring the intention of the Sheriff's Department to submit the initial real estate due diligence package. According to Mr. Updike, the initial real estate due diligence package includes review of all matters of title for each of the lots located on the City block adjacent to the HOJ where the proposed replacement jail would be built.

Review of and Authorization to Execute the Financing Program Project Documents

The proposed resolution supports the request for funding preference on the basis of review of and authorization to execute the financing program Project Documents by conditionally approving the form of (1) the Project Delivery and Construction Agreement, (2) the BSCC Jail Construction Agreement, (3) the Ground Lease, (4) the Right of Entry for Construction and Operation, and (5) the Facility Sublease, and authorizing certain officers of the City to execute such Project Documents.

Future Board of Supervisors' Approvals Needed for Construction of the Proposed Replacement Jail

In order for the proposed project to proceed, Board of Supervisors' approval would need to be obtained for:

(1) The acquisition of real property where the proposed facility would be located;

(2) The findings of an environmental review under CEQA; and

(3) The issuance of Certificates of Participation to finance the project.

However, under the RFP, the City would be required to acquire the real property for the proposed facility within 90 days of receiving notification by BSCC of the conditional award for financing. Mr. John Updike, Director of Real Estate for the City, advises that the City is likely to be able to acquire the subject property within 90 days of notification from BSCC. The estimated cost to acquire the property is included in the $290,000,000 total estimated project cost as part of the Site Control cost noted in Table 1 above.

FISCAL IMPACT

The proposed resolution would authorize the City to submit a grant application to BSCC for $80,000,000 in State revenue bonds under SB 1022 to fund the construction of a proposed jail facility to replace County Jails #3 and #4. If the City is awarded the full requested grant amount of $80,000,000, it would offset $80,000,000 of the estimated $290,000,000 cost of developing and constructing the proposed replacement jail.

The proposed resolution would allocate $8,900,000 of $11,190,000 in funds previously appropriated by the Board of Supervisors as the matching funds required under SB 1022 exclusively to pay for preliminary designs, studies, environmental review and analysis, and

preliminary project management for the proposed replacement jail, if the City is conditionally awarded and accepts a SB 1022 grant.

POLICY CONSIDERATIONS

The proposed resolution does not commit the City to constructing the proposed replacement jail, but does move forward the proposed acquisition of property.

Although the RFP requires counties seeking funding preference to include a Board of Supervisors' resolution authorizing the proposed project to proceed in its entirety when and if SB 1022 grant funds are awarded, the proposed resolution does not grant such authorization. Rather, the proposed resolution states that such authorization will only be granted if:

(a) The Board of Supervisors elects to proceed with the project after all required environmental review is completed;

(b) The City is awarded the SB 1022 grant;

(c) The City acquires the real property necessary for the proposed replacement jail; and

(d) The City obtains sufficient funding for the development and construction of the proposed replacement jail.

Carol Wong, Deputy City Attorney, advises that the City cannot commit to constructing the proposed replacement jail, as required under the RFP in order to seek funding preference, unless many of the above mentioned conditions are satisfied. Nonetheless, according to Ms. Tamsen Drew, Deputy Director of Government and Legislative Affairs in the Mayor's Office, the relevant City departments have determined to proceed with requesting funding preference on the basis of having committed adequate matching funds, as reflected in the proposed resolution.

Although the proposed resolution does not commit the City to constructing the proposed replacement jail, the City would be required to acquire the real property for the proposed facility within 90 days of receiving notification by BSCC of the conditional award for financing. Mr. Updike advises that he anticipates introducing a resolution to the Board of Supervisors approving the acquisition of the subject property in November 2013, in order to be prepared to complete the acquisition of the subject property within 90 days of receiving notification by BSCC. According to Mr. Updike, the acquisition of the subject property, subject to Board of Supervisors approval, would be financed by the issuance of the commercial paper notes in the interim, and would be paid down by Certificates of Participation at a later date.

RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

September 27, 2013

Honorable Members of the Board of Supervisors
City Hall
San Francisco, CA 94102

Dear Members of the Board of Supervisors,

This letter serves to certify that funding has been appropriated in the City's Budget to meet the State's Community Corrections 10% County match required to apply for a grant to construct jail facilities. The Controller attests to the terms and conditions identified in the resolution of the Board of Supervisors approving this grant as follows:

(1) The City's cash contribution funds have been derived from lawfully available funds.

(2) Payment of City's cash contribution funds (i) is within the power, legal right and authority of City, (ii) is legal and will not conflict with or constitute on the part of City a material violation of, a material breach of, a material default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance upon any property of City under the provisions of any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, installment sale agreement, contract, or other material agreement or instrument to which City is party or by which City or its properties or funds are otherwise subject or bound, decree, or demand of any court or governmental agency or body having jurisdiction over City or any of its activities, properties or funds; and (iii) is duly authorized by all necessary and appropriate action on the part of the governing body of City.

(3) The City's cash contribution funds are not and will not (i) be mortgaged, pledge, or hypothecated by City in any manner or for any purpose, (ii) the subject of a grant of a security interest by City, (iii) mortgaged, pledged or hypothecated for the benefit of City or its creditors in any manner or for any purpose, or (iv) the subject of a grant of a security interest in favor of the City or its creditors.

(4) The City shall not in any manner impair, impede or challenge the security, rights and benefits of the owners of any lease-revenue bonds sold by the State Public Works Board for the Proposed Facility (State Bonds) or the trustee for the State Bonds.

Kindly let me know if you have any questions regarding the legality or availability of the County match appropriated for the jail construction project.

Sincerely,

Ben Rosenfield
Controller

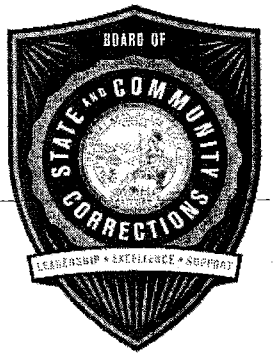
cc. Kate Howard, Mayor's Budget Director
Carol Wong, City Attorney
Ross Mirkarimi, Sheriff

SB 1022 – REQUEST FOR PROPOSALS

CONSTRUCTION OF ADULT LOCAL CRIMINAL JUSTICE FACILITIES

Issued: July 23, 2013

Proposals Due: October 24, 2013



BOARD OF STATE AND COMMUNITY CORRECTIONS

600 Bercut Drive, Sacramento, CA 95811
916.445.5073 PHONE
916.327.3317 FAX
bscc.ca.gov

Leadership ★ Excellence ★ Support

SB 1022
CONSTRUCTION OF ADULT LOCAL CRIMINAL JUSTICE FACILITIES
REQUEST FOR PROPOSALS

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STATE OF CALIFORNIA
BOARD OF STATE AND COMMUNITY CORRECTIONS

BOARD MEMBERS

Secretary, Department of Corrections and Rehabilitation ..... **Jeffrey A. Beard**
Chair

Director, Division of Adult Parole Operations ..... **Daniel Stone**
Department of Corrections and Rehabilitation

County Sheriff in charge of a local detention facility ..... **Dean Growdon**
which has a jail rated capacity of 200 or less inmates — Lassen County

County Sheriff in charge of a local detention facility ..... **Leroy Baca**
which has a jail rated capacity of over 200 inmates — Los Angeles County

County Supervisor or County Administrative Officer ..... **Susan Mauriello**
Santa Cruz County

Chief Probation Officer from a county with a population ..... **Linda Penner**
over 200,000 — Fresno County

Chief Probation Officer from a county with a population ..... **Adele Arnold**
under 200,000 — Tuolumne County

Judge ..... **William R. Pounders**
Los Angeles County (retired)

Chief of Police ..... **David L. Maggard, Jr.**
Irvine Police Department

Community provider of rehabilitative treatment or services ..... **David Steinhart**
for adult offenders — Commonweal - Juvenile Justice Program

Community provider or advocate with expertise in effective ..... ***Vacant***
programs, policies, and treatment of at-risk youth and juvenile offenders

Public Member ..... **Mimi H. Silbert**
Delancey Street Foundation

EXECUTIVE STAFF

Curtis J. Hill, Executive Officer (A)
Scott B. Frizzie, Chief Deputy Director

EXECUTIVE STEERING COMMITTEE MEMBERS
ADULT LOCAL CRIMINAL JUSTICE FACILITIES
CONSTRUCTION FINANCING PROGRAM

Robert Doyle, Sheriff (Chair)
Marin County Sheriff's Office

Darren Thompson, Sheriff (Co-Chair)
San Benito County Sheriff's Office

William D. Gore, Sheriff
San Diego County Sheriff's Department

Federal Glover, County Supervisor
District 5, Contra Costa County

Terri Daly, Chief Administrative Officer
El Dorado County Administrative Office

Larry Spikes, County Administrative Officer
Kings County Administration Office

Scott MacDonald, Chief Probation Officer
Santa Cruz County Probation Department

Stephanie James, Chief Probation Officer
San Joaquin County Probation Department

Dr. Don Kingdon, Deputy Director
California Mental Health Directors' Assoc.

BOARD OF STATE AND COMMUNITY CORRECTIONS CONSTRUCTION FINANCING PROGRAM

Purpose of the Request for Proposals

The purpose of this Request for Proposals (RFP) is to establish conditional awardees and allocate financing[1] as authorized by Senate Bill (SB) 1022 for the construction of adult local criminal justice facilities. This legislation provides up to $500,000,000 in state lease-revenue bond financing authority for acquisition, design and construction, including expansion or renovation, of adult local criminal justice facilities in California.

Board of State and Community Corrections Contacts and Web Information

Prior to developing and submitting a proposal, interested counties should carefully review the entire RFP package. Applicants are encouraged to access the Board of State and Community Corrections' (BSCC) construction program web pages (see links below) for helpful information related to this RFP, correctional trends and programming, Frequently Asked Questions, standards and construction issues. Questions regarding the RFP may be directed to BSCC staff.

Robert Oates, Project Director III
Robert.Oates@bscc.ca.gov
(916) 445-9435

Sebastian Cosentino, Project Director II
Sebastian Cosentino@bscc.ca.gov
(916) 445-6027

Lenard LaChappell, Project Director II
Lenard.LaChappell@bscc.ca.gov
(916) 445-6023

Michael Scott, Project Director II
Michael.Scott@bscc.ca.gov
(916) 341-7327

Gary Wion, Deputy Director
Gary.Wion@bscc.ca.gov
(916) 324-1641

BSCC's SB 1022 webpage:
http://www.bscc.ca.gov/programs-and-services/fso/services

Additional SB 1022 resources webpage:
http://www.bscc.ca.gov/programs-and-services/fso/resources

[1] A COUNTY'S RECEIPT OF A CONDITIONAL AWARD FOR STATE FINANCING, AS DESCRIBED HEREIN, DOES NOT GUARANTEE THE AWARDED COUNTY WILL RECEIVE ANY REIMBURSEMENT, THE STATE WILL OBTAIN INTERIM FINANCING, OR THAT BONDS WILL BE ISSUED. THE CONDITIONAL AWARD IS MERELY AN EXPRESSION THAT THE COUNTY IS QUALIFIED, AT THIS POINT, TO MOVE FORWARD IN THE PROCESS. THE SB 1022 ADULT LOCAL CRIMINAL JUSTICE FACILITIES CONSTRUCTION FINANCING PROGRAM IS NOT A GRANT PROGRAM.

TIMELINE OF KEY EVENTS
SB 1022 REQUEST FOR PROPOSALS PROCESS

March 18, 2013	Executive Steering Committee (ESC) meeting to develop elements of Request for Proposals (RFP) and proposal evaluation criteria.
July 22, 2013	Board of State and Community Corrections (BSCC) to take action on RFP at regularly scheduled board meeting.
July 23, 2013	BSCC issues final RFP.
August 12, 2013	Bidders' conference in Sacramento.
October 24, 2013	Proposals due to BSCC office by 5:00 PM.
October 25 – November 5, 2013	Staff completes technical requirements review of proposals. Counties are given opportunity to correct technical deficiencies.
November 6, 2013	Raters' training for ESC.
November 7 – December 3, 2013	ESC reviews the proposals and makes preliminary ratings.
December 4 – 6, 2013	Scheduled county presentations on proposals to ESC (Sacramento). ESC makes final rating and ranks proposals for funding recommendations.
December 9 – 11, 2013	Staff finalizes ESC recommendation package.
December 12, 2013	ESC recommendations mailed to counties and BSCC Board.
January 2014	ESC recommendations presented to BSCC for funding action/conditional awards at a scheduled board meeting.

BIDDERS' CONFERENCE REGISTRATION
SB 1022
ADULT LOCAL CRIMINAL JUSTICE FACILITIES
CONSTRUCTION FINANCING

A bidders' conference will be held in West Sacramento on August 12, 2013 from 1:00 pm to 3:30 pm (may end earlier). The intent of the bidders' conference is to provide counties and other interested parties the opportunity to ask questions regarding the RFP, and receive clarification on the RFP process. Attendance is optional. Following the conference, questions and answers from the session will be posted on the BSCC website at: http://www.bscc.ca.gov/programs-and-services/fso/services.

Bidders' Conference Location:

State Department of General Services
The Ziggurat Building
707 3rd Street
West Sacramento, CA 95605
(916) 375-4940

Pre-registration for the conference is requested. Please forward an email to the BSCC at the below address and advise of the county or other entity attending, and the number of anticipated attendees. There is no cutoff date for registration. Please include with the registration any questions related to the RFP. There will also be opportunity at the conference for public questions.

Submit registration information to BSCC at:
constructionprogram@bscc.ca.gov.

BOARD OF STATE AND COMMUNITY CORRECTIONS
CONSTRUCTION FINANCING PROGRAM

REQUEST FOR PROPOSALS
DETAIL AND BACKGROUND

SUMMARY

On June 27, 2012, SB 1022 (Chapter 42, Statutes of 2012) became law authorizing state lease-revenue bond financing for the acquisition, design and construction of adult local criminal justice facilities. **Up to $500,000,000 in financing authority is conditionally available at this time.** This RFP is intended to solicit proposals to establish a rank-ordered list of projects, and to conditionally allocate this financing to projects for the design and construction, including expansion or renovation of criminal justice facilities.

This RFP for county criminal justice facility construction is being issued for the State of California by the Board of State and Community Corrections (BSCC). **Proposals must be completed and received at the BSCC office in Sacramento no later than 5:00 PM on October 24, 2013.** Proposals received after that date and time will not be considered.

As defined in law for purposes of this SB 1022 construction financing program, adult local criminal justice facilities may include any custodial housing, reentry, program, mental health, or treatment space necessary to manage the adult offender population consistent with the legislative intent described in Sections 17.5 and 3450 of the Penal Code, under the jurisdiction of the sheriff or county department of corrections.

Consistent with the stated legislative intent, applicant counties are expected to judiciously consider programming needs to manage the offender population, and the range of alternatives to incarceration that may affect bed space needs, while employing the least restrictive options.

The legislation specifies funding consideration shall be given to counties that are seeking to replace existing compacted, outdated, or unsafe housing capacity or are seeking to renovate existing or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

Further, the legislation specifies funding preference shall be given to counties that are most prepared to proceed successfully with this financing in a timely manner. The determination of preparedness to proceed shall include, but not be limited to, counties providing documentation of adequate, available matching funds authorized by the county board of supervisors from a source or sources compatible with this financing authority as determined by the State Public Works

Board (SPWB) in its sole discretion. The determination of preparedness to proceed will also include submission of the following with the county's project proposal submission:

1. All documents required in the initial county real estate due diligence submission package.
2. Documentation evidencing California Environmental Quality Act (CEQA) compliance has been completed.
3. A resolution adopted by the county's Board of Supervisors certifying the county has read the forms of the project documents for this financing program, and authorizing the appropriate county representative(s) to execute each in substantially the forms presented, at the appropriate times within the financing program, if conditionally awarded.

The basic principles set forth in the preceding paragraphs will serve as the foundation for projects to be considered for financing within this program.

Counties must provide a minimum of 10 percent of the total project costs as county contribution (match). Counties with a general population of less than 200,000 may petition the BSCC requesting a lower level of required minimum contribution (match).

The SPWB and BSCC are authorized to enter into agreements with participating counties for acquisition, design and construction of county criminal justice facilities for projects approved by the BSCC. For purposes of this program, state financing of projects may also include acquisition of completed facilities through a build-to-suit purchase.

A county may only add housing capacity if the county clearly documents an existing housing capacity deficiency. Counties requesting to add housing capacity will be required to certify and covenant in a Board of Supervisors' resolution that the county is not and will not be leasing housing capacity in the proposed criminal justice facility to any other public or private entity for a period of 10 years beyond the completion date of the facility. Regional facility projects meeting the related requirements of this RFP are required to make this certification as well, confirming that the proposed regional facility will only provide housing capacity for the counties involved in the proposal and the arrangement is not being pursued for profit-making purposes by any of the counties involved.

This financing program will be administered by BSCC, with project approval and administrative oversight provided by the SPWB and California Department of Finance (DOF) (acting independently in some instances and as staff to the SPWB in others). The state financing authorized in this program will be from the issuance of lease-revenue bonds. This financing mechanism requires the SPWB to hold an irrevocable leasehold interest of the criminal justice facility during the term of the lease-revenue bonds (approximately 25 years after bonds are sold). The SPWB will lease the criminal justice facility to BSCC, who will in turn sublease the facility to the participating county for their use and operation in the care of county offenders.

Counties that receive notice of a conditional award for financing are responsible for: the site acquisition (if necessary); environmental determinations/mitigation measures; design; construction; staffing; operation; and repair and on-going maintenance of the facility in accordance with applicable laws, regulations, and any terms and conditions in the state/participating county agreements. Some, but not all, of these costs may be included as part of a county's contribution requirement. Counties have the performance obligation to successfully complete the construction project (i.e., proposed scope including number of beds to be constructed; within agreed upon timelines; built to code and standards; and within budget). Counties are also responsible to staff and operate the facility within 90 days after construction completion.

It is anticipated that counties selected for financing through this RFP process will be issued a conditional award by the BSCC at its January 2014 meeting. These awards are "conditional" in that they are predicated, at a minimum, on the requirements that: 1) each county's project be approved by the BSCC at various stages throughout planning and construction, as defined in this RFP; 2) each county's project receive appropriate review and approvals through the state capital outlay process; 3) each selected county enters into the state/participating county agreements as required; and, 4) lease-revenue bonds are sold for each selected project. The lease-revenue bonds provide the necessary long-term financing mechanism to repay all state interim financing and to complete construction of the selected criminal justice facility projects.

Each project submitted for financing under this RFP and conditionally awarded by the BSCC, must comply with specific project milestone requirements to assure the project moves forward in a timely fashion through the state processes. A proposal submittal by a county must include acknowledgement of the milestone requirements. If, after conditional award, a county is unable to perform to the project milestone expectations as detailed in this RFP, the project will be brought to the BSCC Board for review and potential action regarding the county's conditional award status.

Accurate scope, cost and schedule estimates are needed before responding to the RFP. After receiving a conditional award notification, successful applicant counties must translate the proposed project into formal architectural plans and specifications that are submitted to and approved by the BSCC and through the state capital outlay process. Counties must construct the criminal justice facility to enable conformance with operational, fire and life safety, and physical plant standards as contained in Titles 15 and 24, California Code of Regulations (CCR), as may be applicable. For planning purposes, please note that under this financing program construction should be complete within three years after the participating county begins construction.

The BSCC will not increase state financing amounts after a conditional award notification, or approve a reduction in the proposed and accepted scope of work, if counties receive higher than expected bids. Counties are solely responsible for the payment of higher than anticipated project costs. If counties are able to complete their project utilizing an amount of state financing that is less than was

conditionally awarded for the project, the excess financing allocations shall be returned to the state and may be redistributed and used for other projects.

EXECUTIVE STEERING COMMITTEE/BOARD OF STATE AND COMMUNITY CORRECTIONS BOARD

The BSCC Board has appointed an Executive Steering Committee (ESC) to guide this process; develop recommendations on elements of the RFP and proposal evaluation criteria; review and rate proposals; and make conditional financing award recommendations to the BSCC Board. The ESC's role is advisory to the BSCC Board. The RFP timeline and process may be changed at any time by the BSCC Board. Counties will be notified if changes or modifications occur. The BSCC Board may reject any or all proposals. The BSCC Board will have final determination of the ranking of the projects and will issue conditional financing decisions. BSCC must certify each conditionally awarded project to the SPWB, and each project must receive all necessary reviews and approvals through the state capital outlay process in order to be determined eligible for and maintain eligibility within this financing program.

In order to maintain objectivity and impartiality, members of the ESC and the BSCC Board request that applicants do not contact them about the proposals at any time during this process. Any member of the ESC will abstain from participation in discussions or evaluations of applications submitted by their county of employment or in situations where they have an actual or potential conflict of interest.

ELIGIBLE PROJECTS

Counties may apply for and receive state financing to build new, or expand or renovate existing adult local criminal justice facilities. For purposes of this program, adult local criminal justice facilities are defined as facilities that may include any custodial housing, reentry, program, mental health or treatment space necessary to manage the adult offender population consistent with the legislative intent described in Sections 17.5 and 3450 of the Penal Code, under the jurisdiction of the sheriff or county department of corrections. The facility subject to construction does not have to be a jail/detention facility, and likewise, the project may or may not include custodial housing/beds. An example of a non-jail facility that would be eligible under this program is a day reporting center (under the jurisdiction of the sheriff or county department of corrections). Projects that include renovation of existing facilities may be permissible if they promote the long-term use of the facility, or the work is necessitated by other project components.

For those projects that do include a jail facility, Type II, III and IV county adult detention facilities are eligible. Type I jail facilities and temporary and court holding facilities projects are not eligible. These facility types are defined in Titles 15 and 24, CCR – the state standards for county detention facilities. If counties have any concerns or questions about their proposed project as it relates to

these standards, please contact your county's BSCC-assigned facility inspector at the earliest possible time to discuss feasibility issues and options for proceeding before a proposal is submitted.

Consistent with the legislative intent of SB 1022, and as stated in Penal Code sections 17.5 and 3450, each project must include a component of construction or renovation that incorporates program space. Projects that do not include some measure of program space in the construction or renovation are not eligible. For purposes of this SB 1022 financing program, "program space" is defined as space in which offenders receive services in the form of programming or treatment to reduce recidivism or as an alternative to incarceration.

Projects may include construction of beds where the county can document an existing housing capacity deficiency. "Existing" is defined as early in year 2014, and counties may build for needs meeting projections to this point in time, and no further. Counties must clearly articulate and justify their determination of "housing capacity deficiency." A county's calculation of need shall include any construction projects for which the county is conditionally awarded under AB 900, and any other construction projects which the county is undertaking.

Any reference to "beds" means BSCC-rated beds that are dedicated to housing offenders in a jail facility's single and double occupancy cells/rooms or dormitories. Beds can also include special use beds for medical, mental health and disciplinary purposes. All beds must be planned and designed in conformance with the standards and requirements contained in Titles 15 and 24, CCR. Temporary holding cells, sobering cells and safety cells may be constructed under this program as needed, but are not considered as cells/rooms with beds (i.e., housing capacity).

For renovation projects or new construction that is physically attached to an existing facility, the lease-revenue bond financing mechanism requires that the scope of the proposed project include all work necessary for the existing facility to meet current fire and life safety standards, and meet or exceed a seismic level 3 performance standard. These improvements may qualify as necessary renovation. However, if the new addition is seismically separated from the existing facility, upgrades to the existing facility will likely not be required. This aspect of each awarded project will be carefully reviewed and considered throughout the state capital outlay process.

Counties must ensure that construction plans also include all necessary ancillary space to enable the facility to comply with operational, fire and life safety, and physical plant standards as contained in Titles 15 and 24, CCR (e.g., dining, showers, recreation, medical exam rooms). All ancillary space included in the financed project, which includes administrative space, must be reasonable and necessary for facility operations.

TWO TYPES OF PROJECT PROPOSALS

Each project proposal submitted in response to this RFP will be either a) a **Beds and Program Space** proposal that incorporates beds in the construction or

renovation, along with the requisite inclusion of program space in the construction or renovation; or b) a **Program Space** proposal that includes the requisite program space in the construction or renovation, but does not include any beds in the construction or renovation.

Project proposals are not limited to the construction of only beds and program space in the eligible project components. The "beds" and the "program space" are merely defining characteristics of the two basic types of proposals. It is expected that each adult local criminal justice facility project will incorporate all other necessary spaces for a functioning facility. Beds, or program space, are considered to be "constructed" whether it is new construction or renovation, and whether or not there is a resulting addition or net gain in bed count or number of program spaces.

LIMIT ON NUMBER OF PROJECTS AND FINANCING REQUESTS

Set-asides: Up to $500,000,000 in state lease-revenue bond financing authority is currently available. To ensure that large, medium and small counties each have the opportunity to share in the available financing, the total has been divided as follows. (See table on page 15 for County Population Chart.)

- Large county set-aside: $240,000,000
- Medium county set-aside: $160,000,000
- Small county set-aside: $100,000,000

Number of Projects: In order to fund as many counties as possible, each county is limited to one project proposal (with the exception of one additional regional facility proposal). Each proposal submittal must be limited to one site location. Counties are not eligible to submit one proposal that incorporates multiple site locations, as multiple sites are considered multiple projects for purposes of this program.

Counties that submit a proposal for a project within their county, may also participate in one regional facility project submittal that meets all of the requirements outlined in this RFP for regional facility project submittals. (The regional facility project submittal will require a separate proposal from the lead county. See Regional Facilities section for details.) If a county submits more than one proposal, the County will be required to construct all of the projects awarded, and to do so within the project timeline requirements referenced in this RFP. Likewise, counties must be able to justify the need for both projects as required by this RFP.

Project Caps: The maximum amount of state financing that can be requested with each project proposal submittal is as follows, based on the size of the county submitting:

- Large counties: $80 million
- Medium counties: $40 million
- Small counties: $20 million

Maximum State Financing: The maximum amount of state financing that can be requested in any one project proposal submittal is limited to 90 percent of the total project costs, up to the amount of the project caps listed above. Small counties may receive a reduction to the 10 percent contribution (match) requirement following petition to the BSCC Board. (See the Budget Summary section of the Proposal Form for the petition.) Small counties that petition for a reduction must still provide a minimum of five percent contribution, and in these cases the maximum amount of state financing is limited to 95 percent of the total project costs, up to the amount of the project caps listed above.

Subject to these maximum state financing limits, the state has no overall limit on the total cost of an eligible county project, so long as the county demonstrates adequate local funding for the county contribution amount related to the project, and commits to the on-going operation of the facility.

The table below defines each county's size by category of small, medium or large and is based on county general population data.

COUNTY POPULATION CHART			
Large Counties (pop. 700,001 +)	Medium Counties (pop. 200,001-700,000)	Small Counties (pop. 200,000 or fewer)	
Alameda	Butte	Alpine	Modoc
Contra Costa	Marin	Amador	Mono
Fresno	Merced	Calaveras	Napa
Kern	Monterey	Colusa	Nevada
Los Angeles	Placer	Del Norte	Plumas
Orange	San Joaquin	El Dorado	San Benito
Riverside	San Luis Obispo	Glenn	Shasta
Sacramento	Santa Barbara	Humboldt	Sierra
San Bernardino	Santa Cruz	Imperial	Siskiyou
San Diego	Solano	Inyo	Sutter
San Francisco	Sonoma	Kings	Tehama
San Mateo	Stanislaus	Lake	Trinity
Santa Clara	Tulare	Lassen	Tuolumne
Ventura	Yolo	Madera	Yuba
		Mariposa	
		Mendocino	

Source: Department of Finance, May 2013

FUNDING PREFERENCE

The SB 1022 legislation (Government Code section 15820.926(b)) requires that funding preference shall be given to counties that are most prepared to proceed successfully with this financing in a timely manner. It further requires that the determination of preparedness to proceed shall include, but not be limited to, counties providing documentation of adequate, available matching funds authorized by the county Board of Supervisors from a source or sources compatible with the authorized financing, as determined by the SPWB in its sole discretion. Meeting the funding preference criteria is not required in order to be

awarded in this process; however, projects that satisfy the preference criteria will be awarded first within their respective set-aside category (small, medium and large counties).

There are four distinct funding preference criteria, as outlined below. Each proposal submittal may address one or more of these criteria. The first criterion – commitment of adequate county contribution funds, is a mandatory criterion required by law, as noted above. In order to seek any level of funding preference, this criterion must be satisfied. If this criterion is not satisfied, then none of the other preference criteria will be considered for this project submittal. The additional three criteria are optional. However, the greater number of criteria that are satisfied, the greater overall preference that will be afforded the proposal. The appropriate state agencies will review the documentation submitted in connection with satisfying the funding preference criteria and determine whether each criterion has been adequately satisfied in order for it to count toward receiving the actual preference. Each of the four preference criterion carries specific submittal requirements, including language required in Board of Supervisors' resolution.

The four preference criteria are as follows:

1. Commitment of adequate county contribution funds (<u>mandatory</u> criterion).
2. Initial real estate due diligence package submittal.
3. Documentation evidencing CEQA compliance has been completed.
4. Review of and authorization to execute the financing program project documents.

Each proposal will be rated by the ESC, without regard for whether the county is seeking the funding preference. From this rating, a single rank-ordered list of projects will be established, and divided into three set-asides for small, medium and large counties. When the BSCC Board makes conditional awards, those counties that sought and satisfied the preference criteria with their proposal will be awarded first within each set-aside. The order of awards to counties receiving the funding preference will be determined by 1) the number of preference criteria fully satisfied, and then 2) in rank order. Once all projects that satisfied the preference criteria have been conditionally awarded within each given set-aside, then the projects not receiving funding preference will be awarded next, contingent on the amount of financing remaining in each set-aside.

Adequate County Contribution Funds (<u>mandatory</u> criterion): All proposals seeking the funding preference must include all documentation necessary to evidence that the Board of Supervisors has authorized an adequate amount of available funds to fully satisfy the entire amount of the county's cash contribution (match) from a source or sources that are compatible with the state financing authorized in this program. The adequacy of county contribution funds will be determined by the SPWB, in its sole discretion. Determination of adequacy will include whether the county has provided all necessary documentation, whether the amount of funds authorized and available satisfies the county cash contribution amount (as reflected in the Budget Summary Table in the Proposal Form), and whether the source of funds is deemed compatible with the SPWB's lease-revenue bond financing.

Commonly acceptable forms of county contribution funds are General Fund or special use funds. Special use funds require submission of documentation demonstrating the fund source is legally authorized and the proposed project is a lawful use of the funds. Any proposed debt financing will require review by the SPWB on a case-by-case basis because the terms of the potential methods of financing can vary greatly.

The documentation provided must include, but is not limited to, the following:

- The name of each specific fund source to be used, the amount of county cash contribution funds attributed to each source, documentation evidencing the Board of Supervisors has authorized the required amount of funds from each identified source specifically for the proposed project, and documentation demonstrating the authorized funds are available for use solely on the proposed project.
- Citation of the legal authority for each identified fund source evidencing the fund source is legally available and the proposed use is a lawful use of the funds.
- Authorization from the Board of Supervisors to proceed with the proposed project in its entirety if a conditional award of state financing is received.

All county contribution funds documentation shall be submitted in duplicate, in a separate packet, accompanying the proposal submittal to BSCC. The Board of Supervisors' resolution that accompanies the proposal submittal must include the required language for this specific preference criterion, as outlined in the Board of Supervisors' Resolution section of the Proposal Form.

Real Estate Due Diligence (optional criterion): Each proposal seeking to satisfy this criterion must include all documents required in the initial county real estate due diligence submission package. Two separate and duplicative copies of this complete package must accompany the proposal submittal to BSCC. Incomplete packages will result in this preference criterion not being met. Also, the Board of Supervisors' resolution that accompanies the proposal submittal must include the required language for this specific preference criterion, as outlined in the Board of Supervisors' Resolution section of the Proposal Form. The Real Estate Due Diligence Preference Criterion – Due Diligence Package Submission Requirements and Checklist document is a checklist of items needed to constitute a complete submittal of the initial real estate due diligence package, and is provided on the BSCC website with the RFP.

This preference criterion can only be met by counties that are also able to make the site assurance attestation required in this RFP process at the time of proposal submittal. (See Site Assurance section of this RFP, and the required resolution language in the Proposal Form.) The real estate due diligence package submittal requires in depth documentation regarding the project site; therefore, the site assurance must be provided with the proposal submittal if this criterion is being sought.

CEQA Compliance (optional criterion): Each proposal seeking to satisfy this criterion must include documentation evidencing that CEQA compliance has been completed, and provide written certification that all statutes of limitation have expired without challenge, or the challenge(s) has been fully resolved.

Two separate and duplicative copies of the CEQA documentation package must accompany the proposal submittal. The package shall include either the final Notice of Determination (NOD) or final Notice of Exemption (NOE) stamped as received by the entity with which it was filed for public review; the stamp must include the date received. Related back-up information and CEQA documents filed previous to the final NOD or NOE are not requested and should not accompany this submittal, but must be retained by the county. The submittal shall also include a written certification by county counsel that states the final NOD or NOE was filed, the entity with which it was filed, when it was filed, and further certifies that all related statutes of limitation have expired without challenge. If there was a challenge(s), the letter from county counsel must acknowledge the challenge(s), including the nature of the challenge(s), and provide documentation evidencing the challenge(s) has been completely resolved in a manner that allows the project to move forward as proposed. If the filing was done with an entity other than the State Clearinghouse, the county must also provide the statute identifying the length of associated statutes of limitation period (duration).

The required Board of Supervisors' resolution language for this preference criterion shall also be provided with the proposal submittal. (See Board of Supervisors' Resolution section of the Proposal Form.)

Authorization of Project Documents (optional criterion): Each proposal seeking to satisfy this criterion must include documentation in Board of Supervisors' resolution that the county has reviewed the form of each of the required project documents for the construction financing program, and the Board of Supervisors has authorized the appropriate county signatory or signatories to execute these documents at the appropriate times (as further detailed in the resolution language in the Proposal Form), with only those changes deemed necessary to incorporate project specific information or effectuate this financing program.

The required Board of Supervisors' resolution language for this criterion shall be provided with the proposal submittal. (See Board of Supervisors' Resolution section of the Proposal Form.) The required resolution language is the only submittal required for this preference.

The project documents for the financing program are listed below and forms of them are available on the BSCC website:

- Project Delivery and Construction Agreement
- Board of State and Community Corrections Jail Construction Agreement
- Ground Lease
- Right of Entry for Construction and Operation
- Facility Sublease

PROJECT COSTS, STATE REIMBURSEMENT AND COUNTY CONTRIBUTION (MATCH)

Total Project Costs: The total project costs are all costs specifically attributable to activities reasonably and directly necessary to complete the acquisition, design and construction of the proposed adult local criminal justice facility project, including all costs reasonably and directly necessary to satisfy the requirement of this financing program. The state has identified specific types of costs as being eligible either for state reimbursement or to be included in the county cash or in-kind contribution (match) within this financing program, as detailed below. These costs are defined as the total project costs for purposes of this financing program. Any other costs will not be considered project costs for purposes of this program.

Each proposal submitted within this financing program must include the total project costs detailed within the appropriate cost categories – state reimbursement, county cash contribution and county in-kind contribution. All amounts for the types of costs identified as eligible for state reimbursement, as well as for county cash contribution, must be reported as total project costs in the Budget Summary Table within the Proposal Form. Costs eligible to be included as county in-kind contribution are optional.

Distinction is made between on-site versus off-site construction costs. On-site is generally considered to include the constructed facility and the area within a reasonable buffer zone surrounding the constructed facility, security fence (if applicable) and parking lot(s). Spaces shall be sized to state standards, and all reasonable and necessary facility ancillary and administrative space may be included. If a county is not reporting land value as part of its in-kind contribution, an appraisal is not needed for purposes of this financing program.

The following sections describe which project costs are eligible within each of the categories – state reimbursement, county cash (hard) contribution and county in-kind (soft) contribution.

State Reimbursement: The state may reimburse counties for specified activities that occur after the project scope, cost and schedule have been established by the SPWB, conditioned on successful completion of the other approval and oversight requirements with this financing program. Project costs eligible for state financing may include:

1. Architectural programming and design (for activities performed by consultants or contractors).
2. Project/Construction Management (for activities performed by consultants or contractors).
3. Building permit fees, sewer/utility use or unit fees, building inspection fees and/or appraisal fees.
4. On-site construction of the BSCC-approved facility project, including site preparation.

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 facility.
6. Fixed furnishings; e.g. built-in and permanently-affixed counters, tables, cabinets and seats, etc., as necessary for the operation of the facility.
7. Installation of fixed equipment and fixed furnishings as necessary for the operation of the facility.
8. Moveable equipment and moveable furnishings; e.g. mobile security equipment, computers, furniture, etc. (subject to state review and approval).

Total project costs attributable to activities related to any of the above listed items that occur prior to the establishment of the project by the SPWB may be claimed as county cash contribution, but are not eligible for state reimbursement. Specific approvals by the SPWB and DOF are required relative to preliminary plans (design development drawings) and working drawings (construction documents). Projects that include any amount of working drawings phase costs as a state reimbursed cost may not proceed with working drawings until the SPWB and DOF have approved preliminary plans. Further, counties cannot proceed with any phase of design (schematic design, design development or construction documents) wherein state reimbursement will be requested for any portion of costs for that phase of design, until after the project has been established by the SPWB.

All costs to be reimbursed from state financing must be identified in the Proposal Form – Budget Summary Table. The maximum amount of state financing that can be requested by individual counties within a proposal submittal is limited to 90 percent of the total project costs, up to the amount of the project caps listed above. Small counties may receive a reduction to the 10 percent contribution requirement following petition to the BSCC Board. However, in no case will the state financing exceed 95 percent of the total project costs, up to the amount of the project caps listed above.

County Contribution (Match) Requirements: All county contribution amounts must be identified in the Proposal Form – Budget Summary Table. The county contribution must account for all of the total project costs not included in the amount to be reimbursed from state financing (with the exception that in-kind costs/contribution are optional), and may be any combination of cash match and/or in-kind match.

It is recognized that with the requirement that all cash contribution amounts be reported for each budget line item in the Budget Summary Table, and that the project may experience some shifting of costs through the project duration, the county's overall contribution amount/percentage may change over the life of the project. Provided all requirements of this SB 1022 financing program are adhered to, that difference in the contribution amount will be accepted. Never will a project be allowed to drop below the required county contribution amounts. As a side note to this, there is no rating bonus for greater contribution amounts. Counties should estimate their budgets as realistically as possible. Budget review and reasonableness is an evaluation factor.

County contribution is subject to the following limitations:

Cash (Hard) Contribution: All county contribution amounts eligible to be claimed in the cash contribution must be reported in this category. The county cash contribution includes costs attributable to activities directly related to the project that are performed by consultants or contractors engaged to perform the specified services, as well as certain other construction-related project costs as specified below. Eligible cash contribution expenditures only include costs of:

1. Items eligible for state financing as previously indicated.
2. Project/Construction Management (for activities performed by consultants or contractors) prior to the establishment of the project by the SPWB.
3. Architectural programming and design (for activities performed by consultants or contractors) prior to the establishment of the project by the SPWB.
4. Preparation costs for full or focused environmental reports (for activities performed by consultants or contractors).
5. Off-site costs, including access roads and utilities development, outside of a reasonable buffer zone surrounding the perimeter of the (security) fence, project facility building and parking lot.
6. Public art.
7. Real estate due diligence costs as billed to the county by the state.
8. State Fire Marshal fees for plan review and inspections, as billed to the county by the state.
9. Audit of state interim or permanent financing at the conclusion of the project (for services performed by a contracted auditor).
10. Needs assessments (for activities performed by consultants or contractors).
11. Transition planning (for activities performed by consultants or contractors after June 27, 2012).

In-Kind (Soft) Contribution: All eligible amounts the county chooses to claim within its contribution must be reported in this category. Any reporting of in-kind costs is optional. The county in-kind contribution includes costs attributable to activities directly related to the project that are performed by county staff, as well as the current fair market land value of the project site, as specified below. Eligible in-kind contribution only includes:

1. Audit of state interim or permanent financing at the conclusion of the project (staff salary/benefits of independent county auditor).
2. Needs assessments (staff salary/benefits directly related to the project).
3. Current fair market land value supported by independent appraisal (on-site land only regardless of acquisition date). This can be claimed for on-site land value for new facility construction, on-site land value of a closed facility that will be renovated and reopened, or on-site land value used for expansion of an existing facility. It cannot be claimed for land value under an existing operational detention facility. If a

county is not reporting land value as part of its in-kind contribution, an appraisal is not needed for purposes of this financing program.

4. County administration (staff salary/benefits directly related to the project for activities after June 27, 2012).
5. Transition planning (staff salary/benefits directly related to the project for activities after June 27, 2012).

Ineligible costs which may not be attributed to state reimbursement, cash or in-kind contribution requirements include, but are not limited to: those project costs that are determined by the BSCC to be unreasonable or unnecessary; construction of other non-project related space such as courtrooms, department offices and county administrative complexes; facility personnel and operational costs, and related costs of supplies; costs outside the scope of the BSCC-approved project; bonus payments; debt service or interest charges; travel and per diem costs; temporary holding or court holding facilities; and jail or program facilities, or portions thereof, under a jurisdiction other than the county sheriff or department of corrections, as may be applicable. Counties must pay for ineligible cost items with supplemental funds not included in the county contribution. If applicants are unsure if an item is eligible as state reimbursable or county contribution, please contact BSCC staff before submitting a proposal. Any costs that are ineligible for purposes of this application, but necessary for the beneficial use and occupancy of the adult local criminal justice facility, shall be funded by the county through other means, and in such timely manner, so as not to interrupt or delay the occupancy and use of the facility.

Timing and Nature of State Financing and County Contribution/Match: The SPWB will not be able to establish the scope, cost and schedule of a project until the respective county demonstrates to the state's satisfaction that all county funds necessary to support the county cash contribution (match) requirement, will be available as necessary for the timely completion of the project. The state will only reimburse county costs attributable to identified eligible state project costs, and only after the start of construction, as approved by the state. Therefore, counties whose project budgets include state reimbursement for any eligible project design costs will not be able to seek reimbursement from the state for those eligible costs until the county has received approval from the state to award a contract to the construction contractor, and issued a notice to proceed to the contractor. At that point the county can request reimbursement of eligible state financed project costs accumulated to date. If the county does not enter into a contract with a construction contractor to construct the project, the county will not be reimbursed for the accumulated project costs.

The state will not finance county contribution amounts. In addition, county contribution funds cannot be provided from any fund source that is incompatible with the SPWB's lease-revenue bonds, as determined in the sole discretion of the SPWB. Of particular concern is a county financing mechanism that would use the proposed facility or any revenues from it as security for the county financing. Any county financing mechanism or funding source may have restrictions, terms or conditions that govern the use of funds, security, fiscal and disclosure obligations associated with that fund source. Commonly acceptable forms of county contribution funds are General Fund or special use funds.

Special use funds require submission of documentation demonstrating the fund source is legally authorized and the proposed project is a lawful use of the funds. Any proposed debt financing will require review by the SPWB on a case-by-case basis because the terms of the potential methods of financing can vary greatly.

County Fund Source Review: This section outlines the typical fund source review for projects. To ensure the county proposed fund source(s) is/are compatible with SPWB lease-revenue bonds, the state will analyze the specifics of the county fund source(s). To facilitate this review, counties will be required to provide information on the source of funds being used for their cash contribution (match). This submittal of county fund sources for state review will be required shortly after the county is conditionally awarded by the BSCC Board, unless the county is seeking the funding preference, in which case this information must be submitted with the county's proposal submission.

For those counties seeking the funding preference, the county fund source review will occur as outlined in the Funding Preference section of this RFP. All projects that are awarded but not defined as seeking/satisfying the preference criteria will be handled as described in this section. All projects, whether the county applied for the funding preference or not, will require a review of all county cash contribution before the project can be established by the SPWB.

PROPOSAL DUE DATE AND SUBMITTAL REQUIREMENTS

The proposal must be made utilizing the *SB 1022 Adult Local Criminal Justice Facilities Construction Financing Program – Proposal Form*, including any exhibits and/or attachments, complete with signature from a designated county official, along with the proposal narrative (to be attached as described later in this RFP). Additionally, all proposals must include:

- The original signed proposal (marked as "original") and 16 copies of the proposal. Each of the 17 proposals shall be clipped (not stapled); three-hole punched on the left side and two-hole punched at the top; printed on a single side only; and without covers, tabs or dividers. Each proposal shall be assembled so as to be easily photo-copied if needed.
- Two duplicate copies of a fully executed Board of Supervisors' resolution (as described in this RFP) must accompany each proposal submittal addressing all required points. Multiple resolutions collectively containing the necessary verbiage are acceptable. Photo copies are also acceptable.
- One copy of a formal needs assessment study per county applicant (as described later in this RFP) must also accompany the proposal submittal, pertinent only to projects proposing a new jail facility or adding 25 or more beds to an existing facility.
- All necessary documentation related to the funding preference criterion, as may be applicable.

Project proposals must be received at the BSCC office, 600 Bercut Drive, Sacramento, CA 95811 no later than 5:00 PM on October 24, 2013. Late

proposals will not be considered. A time-stamped copy of each proposal's first page will be available at the BSCC front desk.

At a future point after proposal submission, to be determined by the BSCC, each county will be required to provide an electronic or disc version of its proposal. BSCC will make contact with the designated project contact person with this request. This is not presently requested and should not accompany the proposal submission.

All proposals received under this program will be: 1) reviewed by BSCC staff for technical compliance with BSCC proposal submittal requirements (with opportunity given to counties to correct technical compliance deficiencies noted by staff before proposals are sent to the ESC for review); 2) reviewed and rated by the ESC; and 3) ranked by the ESC with conditional award recommendations provided to the BSCC Board. All documentation submitted in connection with satisfying the funding preference will be reviewed by the appropriate state agencies to determine whether the specified requirements have been fully satisfied. The BSCC Board may accept, reject, or change any ESC recommendations before providing its conditional awards and recommendations to the SPWB.

BSCC staff's review of the technical compliance requirements will include, but may not be limited to, verifying the following:

- project eligibility (county facility, or jail Type II, III or IV facility, or build-to-suit);
- state reimbursement requested is within project cap limits;
- state reimbursement requested is no more than 90 percent of total project costs, or 95 percent for small counties petitioning for a reduced county contribution amount;
- cost and budget summaries and bed number computations are free of mathematical errors;
- project timetable conforms to required timeframes for specific milestone activities;
- proposal form is in original format and signed;
- font size, number of narrative pages and spacing format is consistent with requirements;
- Board of Supervisors' resolution contains necessary components; and,
- a formal needs assessment study is submitted with the proposal if a new facility is proposed or 25 beds or more are being added.

During the ESC proposal review process, each applicant will be invited to make a brief scheduled presentation of their proposal to the ESC in Sacramento on December 4 – 6, 2013. Although not required, this presentation period is intended to provide applicant counties with the opportunity to answer any questions the ESC may have about the proposed project. Presentations shall be done by county officials and not by consultants. (A county's hired consultants may be in attendance to assist the county as needed.)

TECHNICAL REQUIREMENTS REVIEW OF DRAFT PROPOSAL

It is anticipated that BSCC staff will be available to provide a limited technical review of the draft proposals anytime up to two weeks before the submittal deadline to determine if the draft proposal complies with the technical requirements. Draft proposal reviews are not required. Reviews are informal in nature, non-binding and limited to staff assessment of compliance with state requirements. Staff can make no judgment as to the merit of draft proposals or how proposals will be evaluated by reviewers.

GENERAL CONSIDERATIONS

Build-to-Suit: The SB 1022 legislation permits a build-to-suit arrangement that allows a private developer to purchase land and complete design and construction of a project as specified by a county. The facility would be expected to meet all applicable state regulations, as with any other construction project. The county would be responsible for making the purchase from the developer, and then seeking reimbursement from the state.

The most likely approach to a build-to-suit arrangement compatible with this financing program involves the county entering into a lease arrangement with the developer who owns or will purchase land for this construction project, and will provide the upfront financing for the design and construction of the facility. This will require initial approval and an agreement between the county and the SPWB. The county's lease agreement with the developer would likely have various purchase options, or points in time, when the county could make the purchase from the developer. The county would be responsible for paying rent to the developer once construction is complete and the facility is occupied by the county. When the county determines it is ready to make the purchase of the land and facility from the developer, the county would seek approval from the SPWB, and then make the purchase after this approval has been received. The purchase would then be eligible for state reimbursement, assuming appropriate state approvals are in place.

Counties proposing to utilize a build-to-suit arrangement for their facility construction shall meet the required milestones as outlined in this RFP for site assurance, design, notice to proceed (construction start) and occupancy. In this scenario a county will not have site ownership within 90 days as required for the site assurance requirement; however, the county will be required to provide a complete, detailed and unexecuted copy of the lease agreement intended to be used between the county and the developer. The SPWB reserves the right to edit the agreement as necessary to facilitate the state financing.

Needs Assessment Study/Letter of Intent: One copy of a formal needs assessment study, containing all required data elements as defined in Title 24, CCR, Section 13-102 (c) 2, must be submitted concurrent with the proposal if a county proposes to construct a new jail facility, or add 25 or more beds to an existing facility. Proposals fitting this description that are submitted without a needs assessment study will be rejected. The needs assessment study must

reflect current needs and through the year 2014; this can be an update of a previous needs assessment study. The needs assessment study must support the project being proposed through this RFP process. Adding fewer than 25 beds to existing facilities does not require a separate needs assessment study, but does require a comprehensive targeted summary of need to be provided in the proposal narrative. Proposals submitted to the BSCC will be considered a Letter of Intent to build, expand or remodel a facility as required by Title 24, CCR, Section 13-102 (c) 1.

Site Assurance for Adult Local Criminal Justice Facilities: Counties must possess a suitable project site (fee simple land title or comparable long term possession) and provide assurance by Board of Supervisors' resolution at the time a proposal is submitted, or not later than 90 days following the date of notification by BSCC of the conditional award for financing. This means that any land purchase options must be exercised (and escrow closed) within 90 days following the notification of conditional award. The project site must be suitable for lease-revenue financing as determined in the sole discretion of the SPWB from the results of the real estate due diligence review.

An exception to the aforementioned is related to counties that are following a build-to-suit arrangement with their proposal. For these proposals only, site assurance shall be accomplished by the county providing a complete, detailed and unexecuted copy of the lease agreement intended to be used between the county and the developer.

Real Estate Due Diligence: The state will conduct its own real estate due diligence review of a county's proposed project site. Counties conditionally awarded under this SB 1022 process must submit the completed real estate due diligence package within 120 days from notice of award. (Counties seeking to satisfy the real estate due diligence criterion in the funding preference must follow the requirements outlined in the Funding Preference section of this RFP.) This package includes, but is not limited to, all work related to establishing site ownership and title absent liens, encumbrances, property easements, etc.; and ground/soil analysis, topography, hydrography, environmental impacts and other identified site related issues. This review will confirm that the county's property interest in the site is sufficient to support the state's lease-revenue bond financing and that no exceptions or limitations exist (either recorded or unrecorded) that would interfere with the state's right to beneficial use and occupancy of the facility so long as the bonds are outstanding. Any necessary costs incurred by the state for appropriate title review will be charged to the county. An estimated average cost to counties is $16,000. (See the BSCC website for the County Real Estate Due Diligence Checklist.)

Environmental Requirements: For purposes of this financing program, counties are the lead agency for ensuring that the project complies with the necessary provisions of the California Environmental Quality Act (CEQA) process prior to the start of construction. Counties must submit to the BSCC documentation evidencing compliance with CEQA, and certification from county counsel that the litigation period expired without challenge. If there was a challenge(s), the letter from county counsel must acknowledge the challenge(s),

including the nature of the challenge(s), and provide documentation evidencing the challenge(s) has been completely resolved in a manner that allows the project to move forward as proposed.

Commitment to Staff and Operate the Facility: Counties must commit to staffing and operating the facility in accordance with state standards, as may be applicable, within 90 days of construction completion. Counties must further agree to operate, maintain and repair the facility at least until the state bonds are fully repaid.

Regional Facilities: Counties desiring to construct a regional adult local criminal justice facility for the purpose of serving adult county offenders from multiple counties, must submit one single proposal from the lead county in which the project is being constructed. Data and information relevant to each partner county must be reflected in the lead county's proposal, justifying the project size and components, and clarifying how this regional approach is beneficial. The lead county's size determines the project cap amount that is the maximum amount of state financing the county can request and whether the county can petition for a reduced minimum contribution amount. For proposals seeking the funding preference, as described in the Funding Preference section of this RFP, it is incumbent upon the lead county to meet the preference requirements.

The proposal must include a county Board of Supervisors' resolution from each respective county in the partnership and a copy of a Memorandum of Understanding (MOU) between the partner counties. The agreement must clearly identify the terms, conditions, rights, responsibilities and financial obligations of all parties in sufficient detail that demonstrates that the regional facility will serve or confine offenders from all partner counties.

Although the state will require partnering counties to enter into an MOU, the lead county will be considered the operator of the site/facility and will be the designated participant in the state financing program. All counties in a regional facility will potentially be subject to any and all requirements of the lead county, including but not limited to, all project documents and bond documents necessary in this financing program and for the SPWB's lease-revenue bond financing, with the obligation to perform and complete construction, and provide the required county contribution (match). The county under the terms and conditions of all state/participating county agreements necessary in this financing program may enter into legal arrangements, as it deems appropriate, to ensure that its regional partners provide a portion of the funds to meet its county contribution requirements as outlined in the MOU. Notwithstanding any provision of any contract, agreement or MOU, the failure of any partner county to provide funds to the lead county does not relieve the lead county under state/participating county agreements from its construction and county contribution performance obligations.

The regional facility concept is not intended for counties choosing to: 1) overbuild their current needs; and/or 2) lease beds or other facility space to other entities for financial gain. The SB 1022 legislation (Government Code section 15820.926(b)) specifically states that any county adding housing capacity under

this program shall not lease housing capacity to any other public or private entity for 10 years beyond the completion date of this facility. Counties involved in a regional facility, entering into an MOU and complying with the criteria established in this RFP, are eligible provided the required assurance regarding not-for-profit is included in the Board of Supervisors' certification.

Certification – Leasing of Beds: The SB 1022 legislation (Government Code section 15820.926(b)) states that "Any county requesting to add housing capacity using this financing authority shall be required to certify and covenant in writing that the county is not and will not be leasing housing capacity to any other public or private entity for a period of 10 years beyond the completion date of the adult local criminal justice facility." All projects that are constructing beds (constructing new, expanding or renovating) shall provide this required certification in Board of Supervisors' resolution accompanying the proposal submittal. This leasing restriction applies only to housing capacity added in an adult local criminal justice facility project using financing authorized in this SB 1022 financing program. For this purpose, "added" means newly constructed housing capacity, whether or not there is a net gain in beds. Specific certification language for the resolution is outlined in the Proposal Form – Board of Supervisors' Resolution section.

The purpose of the restriction on leasing beds is to ensure that counties are constructing public safety facilities that are necessary, and not to profit from state financing.

Pilot Projects: BSCC does not grant "variances" to state regulations. However, "pilot projects" and "alternate means of compliance" (both defined in Titles 15 and 24, CCR), may be proposed if counties seek BSCC approval to demonstrate or evaluate a new method to meet or exceed the intent of a regulation in an innovative way. There is no guarantee that the BSCC will approve any pilot project or alternate means of compliance request. If counties have any concerns about their ability to meet standards, or intend to request a pilot project or alternate means of compliance, please contact your county's BSCC-assigned facility inspector at the earliest possible time to discuss feasibility issues and options for proceeding <u>before</u> a proposal is submitted.

PROPOSAL EVALUATION FACTORS

The evaluation factors to be used and the maximum points that will be allocated to each factor are shown in the table below.

Rating Factors and Maximum Points

	RATING FACTOR	MAXIMUM POINTS
1	Project Need	250
2	Scope of Work	200
3	Offender Management and Programming	250
4	Administrative Work Plan	100
5	Budget Review	200
	Total Points:	1,000

The evaluation of each factor will be based on an assessment by the raters to the degree with which a proposal adequately addresses the minimum discussion points in a clear and comprehensive manner, and the extent to which overall statement of need is persuasive. (Information to be evaluated is provided in the Proposal Form – Narrative section).

GENERAL OVERVIEW OF PROCESS AFTER NOTIFICATION OF CONDITIONAL AWARD FOR FINANCING

This section is intended to address general considerations for the time period following the notice from the BSCC Board of a conditional award. The next section – State Capital Outlay/Board of State and Community Corrections Process Details and Timing Requirements, provides a more detailed outline of the milestone requirements that counties must meet at various times throughout the financing process.

All construction proposed to be financed under this program must meet all of the requirements as identified in this RFP and enable facilities to: maintain compliance with safety and security considerations in facility operational standards as contained in Title 15, CCR; fire and life safety standards as contained in Title 24, CCR; and physical plant requirements, as contained in Title 24, CCR. If for any reason the proposed project is exempted from any state or local laws, regulations, ordinances, standards or requirements, counties must provide the BSCC a statement citing the appropriate exemption.

In addition to customary BSCC and State Fire Marshal (SFM) reviews and requirements, the SPWB and DOF (acting independently in some instances and as staff to the SPWB in others) exercise administrative oversight of the state capital outlay process. These requirements play a significant role in the financing of these construction projects with respect to approval and long-term possession of the facilities. This is addressed in detail in the following State Capital Outlay/Board of State and Community Corrections Process Details and Timing Requirements section.

BSCC Staff: A designated BSCC staff person will be assigned to each county/project after counties receive notice of conditional award. The assigned BSCC staff is the primary point of contact for county officials and is responsible for addressing questions or coordinating state responses to issues. The BSCC requires that county communication with the BSCC staff be done by county designated officials, not county contractors or consultants.

SFM Fees: Counties will be responsible for timely payment of all fees generated by the SFM on the county's project during design and construction. The total fees can vary between projects due to complexities of design and/or construction. Considering this variance, and the need to budget for this cost, counties should consider an approximate cost of $35,000, recognizing the actual may be more or less than this amount. (This amount was derived from recent fee data.) This project cost must be captured in the county cash contribution (match) within the Budget Summary Table in the Proposal Form (see State Agency Fees line item). All SFM fees must be paid in full before BSCC will

release the retention being withheld by the state. (See Payment of Eligible State Share section for explanation of state's retention.)

Pre-Design Meeting: After a county receives notice of its conditional award to proceed in the state financing program, county officials and their architects are strongly encouraged to meet with BSCC staff and SFM staff at the BSCC offices in Sacramento for a pre-architectural design meeting in order to review BSCC and SFM requirements and answer questions specific to the county's proposed project.

Architectural Plan Submittals and Acceptance: Counties including design costs as state reimbursed costs, for one or more phases of design, may not proceed with that phase of the design process until after the project scope, cost and schedule are established by the SPWB. Furthermore, counties seeking reimbursement of working drawings/construction documents phase costs cannot proceed with the working drawings/construction documents phase until the county's preliminary plans/design development drawings have been approved by the SPWB and DOF. Additionally, design phase costs intended to be state financed will not be reimbursed until the county begins construction of the facility. If the county does not begin construction of the facility, the design phase costs will not be reimbursed.

For projects constructed via the design-bid-build method, sets of full-size (at least 1/8" scale) architectural drawings must be submitted to the BSCC for review at three sequential stages: 1) two sets at schematic design (30 percent complete and accompanied by an operational program statement as defined in Title 24, CCR); 2) three sets at design development (50 percent complete and accompanied by a preliminary staffing plan and operational and staffing cost statement); and 3) two sets at construction documents (100 percent complete). (After BSCC/SFM approval of construction documents, a SFM signed set of drawings must be submitted to the BSCC.)

For projects constructed via the design-build method, the following submittals to the BSCC/SFM are required: 1) two sets of performance criteria (or performance criteria and concept drawings) accompanied by an operational program statement (as defined in Title 24, CCR), and a preliminary staffing plan and operational and staffing cost statement, and 2) two sets of construction documents. (After BSCC/SFM approval of construction documents, a SFM signed set of drawings must be submitted to the BSCC.) Although not a requirement, counties are strongly encouraged to submit architectural drawings for review prior to reaching the construction document phase, to avoid the potential of costly changes. Counties should contact BSCC staff to discuss the additional plan reviews.

At each submittal stage, BSCC and SFM staff (separate state agencies) conducts independent architectural plan reviews for safety, security and compliance with regulations. Counties are encouraged to meet with BSCC and/or SFM staff for an on-site review meeting following each plan submittal. At each submittal stage, written responses are sent to the county. BSCC response time is generally within 45 days, and the SFM within approximately 60 days.

Review time may take longer. There is no cost to counties anticipated for BSCC services provided.

Sometimes counties may be required to make design changes necessary to comply with regulations or to remedy safety or security defects. The BSCC may also require changes in construction materials to enhance facility safety and security if materials proposed at the time of the final construction plans and specifications are not reasonable, essential and customary (as used statewide) for facilities of the same security level.

The schematic design submittal, or performance criteria (or performance criteria and concept drawings) submittal, is the first formal, official review point of construction plans. Any response to general or conceptual inquiries before this point does not constitute formal plan review or official acceptance by the BSCC or SFM.

Specific to the state capital outlay process, SPWB staff will review preliminary plans (design development) and working drawings (construction documents) for design-bid-build projects and performance criteria (or performance criteria and concept drawings) for design-build projects for consistency with the SPWB's previously approved project scope and cost. (Please see the General Definitions section of this RFP for the definitions of preliminary plans, working drawings, performance criteria and concept drawings.) Any SPWB concerns will be relayed to the counties by BSCC staff.

If the project budget includes any state reimbursements for design activities, the county may not commence any activities in the relevant phase(s) of design until after the SPWB establishes the scope, cost and schedule of the project. This means counties cannot proceed with a phase of drawings (schematic design, design development, construction documents, performance criteria, or performance criteria and concept drawings) wherein state reimbursement will be requested for any portion of that phase of design, until after the project scope, cost and schedule has been established by the SPWB.

Also note that if the project budget includes any state reimbursements for working drawings/construction documents phase costs, the SPWB and DOF must approve preliminary plans/design development drawings before the county can commence work on the working drawings/construction documents phase. For any project that includes any state reimbursement of the working drawings/construction documents phase costs, if the county commences any working drawings/construction documents phase activities before obtaining approval of preliminary plans/design development drawings from the SPWB and DOF, the entire state portion of the project financing will be forfeited and the state will not reimburse any county project costs.

Likewise, for projects utilizing a design-build project delivery method, if the project budget includes any state reimbursements for design-build phase costs, the SPWB and DOF must approve performance criteria or performance criteria and concept drawings before the county can commence work on the design-build phase. For any project that includes any state reimbursement of the design-build

phase costs, if the county commences any design-build phase activities before obtaining approval of performance criteria or performance criteria and concept drawings from the SPWB and DOF, the entire state portion of the project financing will be forfeited and the state will not reimburse any county project costs.

Project Bids: Note that for design-bid-build projects, the state capital outlay process requires state approval of working drawings/construction documents and proceeding to bid, as well as award of a construction contract(s) once bids are received. Likewise, for design-build projects the state capital outlay process requires state approval of performance criteria (or performance criteria and concept drawings) and proceeding to bid, as well as award of a design-build contract(s), once bids are received. All contract awards must be within the SPWB established scope, cost and schedule for the project. As part of the required project milestones, counties are required to receive DOF approval to award a construction/design-build contract, and subsequently issue a Notice to Proceed for construction, within 42 months of conditional award by the BSCC.

State/County Relationship Regarding Construction: The state's relationship with the county is in the form of the agreements stipulated in the State Capital Outlay/Board of State and Community Corrections Process Details and Timing Requirements section. The county's relationship with its construction contractor is in the form of a county Agreement for Construction contract. As such, the state is not contracting for facility construction. Counties are responsible for compliance with the requirements established by the local contracting authority, as well as compliance with county bidding and construction contracting rules and procedures. Resolution of bid disputes, or subsequent construction/design-build contract or consultant disputes, are the sole responsibility of the county. These same principals apply to project/construction management or architectural contracts.

Payment and Performance Bonding and Cost Scheduling: A county that receives state financing shall require its construction/design-build contractor to post payment and performance bonds, each of which shall be in an amount not less than 100 percent of the construction contract price. Construction contingency is limited to 10 percent of the accepted construction contract bid amount. If applicable, in all requests for payment, the contractor shall separately list work not eligible for reimbursement with state financing or payment with county contribution funds, and the county construction administrator shall identify such work for the contractor.

Payment of Eligible State Share: Payment will be made to counties in arrears (reimbursement) based on invoices/progress reports submitted to BSCC on a pre-determined basis. Counties may choose monthly, bi-monthly (every two months) or quarterly invoicing and reimbursement. This means counties will pay their respective contractors first and then submit reimbursement requests to BSCC. (With regards to retention being withheld by a county from its contractor's payment, in accordance with the Public Contract Code, the state will reimburse the county for the county's payments made to a third party escrow account for this retention purpose.) These invoices to BSCC are processed upon receipt, and

then forwarded to the appropriate state agencies for payment. The typical turn-around time for payment to counties after submittal of an invoice is approximately 30 to 60 days. As such, counties should plan for needed cash flow to support the project given the reimbursement basis.

At such time as 95% of the final amount of state reimbursed project costs, which amount may be less than the conditional award amount, have been expended, the state will withhold the remaining 5% as security to be released to counties upon compliance with all state/county agreement provisions including: final construction inspection and approval by appropriate state and local officials; payment of SFM fees in full; staffing and operating the facility within 90 days of construction completion; and state receipt and approval of the final audit report. In cases where project costs dictate the county is unlikely to draw 100% of the conditional award amount, the state will withhold 5% of the budgeted state dollars sooner, before 95% of the conditional award amount has been expended. The timing of the withhold shall be at the sole discretion of the BSCC, and will coincide with the point in time when it appears the project is nearing completion and there are approximately 5% of the state dollars remaining that are likely to be reimbursed to the county.

Accounting and Audit Requirements: Adequate supporting documentation must be maintained in accordance with generally accepted accounting principles (see *Accounting Standards and Procedures for Counties*, State Controller's Office, Division of Local Government Fiscal Affairs) and in such detail as will permit the tracing of transactions from support documentation, to the accounting records, to the financial reports and billings.

Counties that receive state financing must perform an audit of the project within 90 days following conclusion of the construction. The audit must be performed under the direction of a certified public accountant or a county internal auditor that is organizationally independent from the county's project financial officer and project management and accounting functions. The audit is to be performed in accordance with *Government Auditing Standards* (the "Yellow Book"), as promulgated by the Comptroller General of the United States and the contract requirements of the state. The auditor shall advise the county of any findings and recommendations. The final audit report shall be sent to the Board of Supervisors of the county and shall incorporate the county's response, and if needed, plans for corrective action. Two copies of the final audit report, including management letters and corrective action plans (if applicable) must be filed with the BSCC. The state may disallow (that is, deny both use of state financing and any applicable county contribution credit for) all or part of the cost of the activity or action determined to be ineligible and not in compliance with the terms and conditions of the various state financing agreements.

STATE CAPITAL OUTLAY/ BOARD OF STATE AND COMMUNITY CORRECTIONS PROCESS DETAILS AND TIMING REQUIREMENTS

The SPWB and DOF are the principal state entities responsible for the oversight of most capital outlay projects undertaken by the State of California. The SPWB is empowered to issue lease-revenue bonds to finance and refinance the acquisition, design and construction of public buildings which have been authorized by the state Legislature. The Legislature authorized the SPWB to issue lease-revenue bonds for these adult local criminal justice facilities projects. This section outlines the state capital outlay process and the SPWB's and DOF's oversight requirements in this process, as well as BSCC specific requirements at various stages.

Since all of the state-financed adult local criminal justice facilities projects will go through the state capital outlay process, counties are encouraged to be familiar with the Local County Projects, Capital Outlay and State Public Works Guidelines. This document is designed to provide counties an understanding of the tasks necessary to proceed through the state's capital outlay process.

Counties must also be familiar with the various agreements that will be required between the county and state, and be authorized to execute these agreements as a condition of receiving state financing. Counties may be required to participate in key SPWB meetings and must provide supporting project documentation as requested by BSCC staff at various times throughout the duration of the project.

The Local County Projects, Capital Outlay and State Public Works Guidelines and forms of the above mentioned agreements are available on BSCC's website.

PROJECT SCOPE

The following information should be considered when determining project scope:

A fundamental concept in lease-revenue bond financing is the beneficial use and occupancy of the facility for its intended governmental purpose. The financed facility is identified, in part, through a metes and bounds legal description. Generally, in SPWB financings there is a 5 to 15 foot "buffer" that is part of the legal description of the proposed project. This would be the distance between the financed facility and other buildings on the site or security fencing from the property line. This guideline is unrelated to any building code requirement and may be altered given

particular site conditions. A proposed project with less than a 5 to 15 foot buffer will have to be evaluated on a case-by-case basis.

In addition to a "clean footprint" for inclusion in the financing leases, the issue of shared infrastructure may be a factor, e.g., electrical, water, sewer, HVAC, common areas, phone, etc. If a state financed adult local criminal justice facility is proposed to be "physically attached" to another structure by, for example, a corridor, there may be an issue of shared infrastructure with an adjacent building. Generally, all infrastructure components needed for the financed facility to fully function should be included in the footprint, i.e. the legal description should include a fully integrated facility.

Counties will be required to incorporate state seismic and fire and life safety requirements into the scope of their projects. For projects remodeling an existing facility, the existing facility must be brought up to current fire and life safety standards and meet or exceed a seismic level 3 performance standard as evaluated and determined by qualified and licensed structural engineers. If new construction is adding onto an existing facility, the existing facility is generally not required to be upgraded for fire and life safety or seismic standards if the new construction is seismically separate from the existing facility.

PROJECT TIMELINE

Throughout this process, counties will be required to submit various documents to BSCC for processing and approval through the BSCC, SPWB and DOF. Counties should build into their Project Timetable (Section 3 of the Proposal Form) adequate time for all of these activities and reviews to occur. The following tables contain information from the Local County Projects, Capital Outlay and State Public Works Guidelines. The tables are an attempt to provide counties with an overview of the activities and approximate timeframes required for a design-bid-build project and a design-build project. These timeframes include the review and approval processes required of the various state agencies, melding typical BSCC activities with those of SPWB.

All timeframes in the right-hand Approximate Duration column reflect the approximate time it takes from start to finish, and will vary based upon the circumstances of each county's unique project. The timeframes provided are predicated on the state receiving required information from counties in a timely and complete manner and assumes that all activities within a Task are occurring simultaneously.

Due to many variables, an approximate timeframe was not provided for the completion of the real estate due diligence process. However, real estate due diligence must be completed before execution of the PDCA and/or approval of preliminary plans by the SPWB and DOF.

Of importance to this process is the requirement for counties to meet specific milestones within certain timeframes, an indication that the project is on a schedule for consistently moving forward from the time of conditional award by the BSCC Board (anticipated in January 2014). These specific milestones and related timeframe requirements are noted within the table under the Activity heading.

PROJECT TIMELINE – DESIGN-BID-BUILD

ACTIVITY		APPROXIMATE DURATION
Project Start-Up – Notices and Activities		**4 months**
BSCC notifies county of conditional award for project financing.		
County to submit site assurance to BSCC within 90 days of award.		
County to submit real estate due diligence package within 120 days of award.		
Task 1: SPWB Meeting – Project establishment (scope, cost and schedule) (to be completed within 18 months of award)		**4 months**
State development of project scope.		
County development of project schedule.		
County development of detailed cost estimate by phase (3-page estimate).		
Statement describing status of CEQA & status of any litigation.		
Due diligence approval letter from Department of General Services.	These activities are not necessarily completed as part of Task 1, but can be. They must be completed in concert with Task 2 and before Task 3.	
Cash match approval.		
In-kind match approval.		
County signs Certification of Matching Funds.		
County signs PDCA and BSCC Agreement.		
BSCC Plan Review Submittal (within 24 months of award)		**BSCC/SFM 8 weeks**
County submits schematic design drawings & specifications to BSCC/SFM (with operational program statement for BSCC only).		
BSCC Plan Review Submittal		**BSCC/SFM 8 weeks**
County submits design development drawings & specifications/preliminary plans to BSCC/SFM (with staffing plan and analysis of anticipated operating costs for BSCC only).		
Task 2: SPWB Meeting – Preliminary Plan Approval (occurs after BSCC/SFM review)		**6 weeks**
Review of project scope.		
Review project schedule.		
Review of cost estimate (3-page estimate).		

Development of preliminary plan (design development) estimate.	
Documentation that CEQA is complete.	
Preliminary plans (design development) submittal.	
Task 3: SPWB Meeting – Consent to Ground Lease / Right Of Entry	**2 months**
Review of project scope.	
Review of project schedule.	
Review of cost estimate (3-page estimate).	
Meeting with DOF, SPWB Counsel, BSCC, DGS & county scheduled.	
County signs Ground Lease/Easement Agreement/Right of Entry.	
BSCC Plan Review Submittal	**BSCC/SFM 8 weeks**
County submits construction document drawings & specifications (working drawings), to BSCC/SFM for plan check/review and approval.	
Task 4: Pooled Money Investment Board – Loan Request	**4 months**
Certification that the County has satisfied all of the requirements set forth in statute for the financing of the project.	
Twelve month cash flow projection.	
Task 5: Finance Action to Approve Working Drawings and Proceed to Bid	**6 weeks**
Development of scope of bid package.	
Working drawings estimate reconciliation.	
Development of project milestone schedule.	
Review of project scope.	
Review of project schedule.	
Review of cost estimate (3-page estimate).	
Working drawings & specifications submittal.	
Task 6: Finance Action to Award Construction Contract (NTP within 42 months of award)	**5 weeks**
Updated cost estimate (3-page estimate).	
Bid tabulations.	
Updated project schedule.	
Board of Supervisors approval.	
Notice to Proceed/NTP (milestone – within 42 months of award)	

PROJECT TIMELINE – DESIGN-BUILD

ACTIVITY	APPROXIMATE DURATION
Project Start-Up – Notices and Activities	**4 months**
BSCC notifies county of conditional award for project financing.	
County to submit site assurance to BSCC within 90 days of award.	
County to submit real estate due diligence package within 120 days of award.	
Task 1: SPWB Meeting – Project Establishment (Scope, cost and schedule) & Resolution Authorizing Interim Financing (to be completed within 18 months of award)	**4 months**
State development of project scope.	
County development of project schedule.	
County development of detailed cost estimate by phase (3-page estimate).	
Statement describing status of CEQA & status of any litigation.	
Due diligence approval letter from Department of General Services.	These activities are not necessarily completed as part of Task 1, but can be. They must be completed in concert with Task 2 and before Task 3.
Cash match approval.	
In-kind match approval.	
County signs Certification of Matching Funds.	
County signs PDCA and BSCC Agreement.	
Task 2: SPWB Meeting – Consent to Ground Lease / Right of Entry	**2 months**
Review of project scope.	
Updated project schedule.	
Updated cost estimate (3-page estimate).	
Meeting with DOF, SPWB Counsel, BSCC, DGS & county scheduled.	
County signs Ground Lease/Easement Agreement/Right of Entry.	
BSCC Plan Review Submittal (within 30 months of award)	**BSCC/SFM 8 weeks**
County submits performance criteria or performance criteria and concept drawings to BSCC/SFM (with operational program statement, staffing plan and analysis of anticipated operating costs for BSCC only).	
Task 3: SPWB Meeting – Approval of Performance Criteria or Performance Criteria and Concept Drawings (occurs after BSCC/SFM review)	**1 month**
Review of project scope.	

Updated project schedule.	
Updated cost estimate (3-page estimate).	
Development of preliminary estimate.	
Documentation that CEQA is complete.	
Performance criteria/concept drawings submitted.	
Task 4: Pooled Money Investment Board – Loan Request	**4 months**
Certification that the County has satisfied all of the requirements set forth in statute for the financing of the project.	
Twelve month cash flow projection.	
Task 5: Finance Action to Approve Request for Proposals	**6 weeks**
Development of scope of request for proposals.	
Development of project milestone schedule.	
Review of project scope.	
Review of project schedule.	
Review of cost estimate (3-page estimate).	
Request for proposals submitted.	
Task 6: Finance Action to Award Design-Build Contract (NTP within 42 months of award)	**5 weeks**
Review updated cost estimate (3-page estimate).	
RFP results.	
Review updated project schedule.	
Board of Supervisors approval.	
Notice to Proceed (NTP) for construction (milestone – within 42 months of award)	
BSCC Plan Review Submittal	**8 weeks**
County submits construction document drawings & specifications to BSCC/SFM for plan check/review and approval.	

AGREEMENTS

This section provides a framework of details for the various agreements necessary involving county and state entities for the adult local criminal justice facilities construction projects. These overviews are provided for the counties' benefit in an effort to better inform counties of the expected contractual nature of the types of agreements that will be required. Depending on the types of proposals and other unknowns, other individual, county specific agreements may be necessary. Forms of these agreements can be found on the BSCC's website.

1. Project Delivery and Construction Agreement

Parties: SPWB, BSCC and County

Purpose: Provides the necessary framework, agreements, covenants and obligations of the parties in order for SPWB to sell lease-revenue bonds (Bonds) to finance the construction of the jail facility.

Consideration: County's minimum 10 percent contribution (match) (unless County qualifies for and is granted a lower contribution (match) amount) of the total project costs in exchange for the state's reimbursement of up to 90 percent of the total project costs, conditioned on the requirements of the Project Delivery and Construction Agreement (PDCA) and the BSCC Agreement being met by County.

Terms: Required by Government Code section 15820.92, the PDCA will be entered into when the reimbursement resolution for state financing is adopted by the SPWB and terminates upon the later of 1) completion of construction, or 2) execution and delivery of the facility sublease, unless terminated earlier in accordance with its terms.

- The terms of the PDCA are driven largely by statutes, and the requirements necessary for SPWB to issue Bonds; the terms and conditions are designed to support lease-revenue bond financing and, as such, do not lend themselves to substantial negotiation.
- The adult local criminal justice facilities project is subject to the approval and administrative oversight of the SPWB and DOF.
- BSCC will act as liaison between the County and SPWB.
- The County agrees to indemnify and hold harmless the State of California for any and all claims and losses arising out of any breach by County of the PDCA, the operation, maintenance, use and occupancy of the jail facility, and the actions of county's contractors and subcontractors.
- County is obligated and assures state parties it will adhere to the terms of the PDCA, as well as the county's own procurement, bidding and construction laws, regulations and procedures with regards to the construction of the adult local criminal justice facility.
- County agrees to be the "agent" for BSCC and SPWB for purposes of acquiring, designing and constructing the adult local criminal justice facility.

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2. BSCC Agreement

Parties: BSCC and County

Purpose: Sets forth the roles, responsibilities and performance expectations of the parties for the construction of the adult local criminal justice facility.

Consideration: County's minimum 10 percent contribution (match) (unless County qualifies for and is granted lower contribution (match)

amount) of the total project costs in exchange for the state's reimbursement of up to 90 percent of the total project costs, conditioned on requirements of the PDCA and the BSCC Agreement being met by County.

Terms: The BSCC Agreement is entered into concurrently with the PDCA and terminates at the completion of construction.

- The BSCC Agreement details roles and responsibilities of the participating county and the BSCC as it relates to the oversight of the Project.
- County agrees to indemnify and hold harmless the State of California for any and all claims and losses arising out of the acquisition, design or construction of the adult local criminal justice facility.
- County agrees to staff, maintain and operate the adult local criminal justice facility.
- The BSCC Agreement describes county's contribution (match) of total project costs, as well as its responsibility for construction cost overruns beyond the state's contribution and specifies the process and schedule for claiming state reimbursements.
- The BSCC Agreement sets forth the County's reporting and scheduling requirements during the construction period.

3. Ground Lease

Parties: BSCC and County with the consent of the SPWB and approval of DGS

Purpose: To place possession and control of the real property upon which the adult local criminal justice facility will be constructed with BSCC.

Consideration: Facilitates the state financing of an adult local criminal justice facility to be operated and maintained by County.

Terms: The Ground Lease will be entered into after the County has entered into the PDCA and only after the County has certified the site pursuant to Government Code section 15820.925(c)(1) and the SPWB has determined the site is adequate for purposes of financing in accordance with Government Code section 15820.92(a). These certifications will be based upon thorough research of both recorded and unrecorded interests in the property. The Ground Lease terminates only after all Bonds are paid.

- The Ground Lease must be adequate to support lease-revenue bond financing; by virtue of these limitations, the Ground Lease does not lend itself to substantial negotiation.
- Attached to the Ground Lease will be a metes and bounds legal description of the site and a simple diagram of the site, both with surveyor stamps or equivalent.
- The Ground Lease will be recorded.
- The site should not be encumbered by any liens or debt.

- Damages for default are limited to specific performance or money damages.
- The Ground Lease may require an associated Easement Agreement for Grants of Access, Utilities, and Repairs.
- The Ground Lease cannot be terminated as long as the Bonds are outstanding, even in the event of default.
- After all Bonds are paid, the Ground Lease will terminate.

4. Right of Entry for Construction and Operation

Parties: BSCC and County with consent of the SPWB and approval of DGS.

Purpose: Authorizes County and their contractors to use the site that has been leased to BSCC via the Ground Lease for construction related activities, as well as allowing the County to operate the facility if construction is completed prior to the sale of Bonds.

Consideration: Facilitates the County's construction of the SPWB financed adult local criminal justice facility.

Terms: The Right of Entry for Construction and Operation will be entered into concurrently with the Ground Lease. It will terminate when the Facility Sublease is entered into (when Bonds are sold).

- County agrees to indemnify and hold harmless the State of California for any and all claims and losses arising out of the construction of the adult local criminal justice facility.
- This is a standard document for Bond financing and does not lend itself to negotiation.

5. Site Lease

Parties: BSCC and SPWB

Purpose: Transfers control and possession of the adult local criminal justice facility site from BSCC to SPWB on which the financed adult local criminal justice facility is to be located (the "Site").

Consideration: BSCC provides the Site in order to enable the SPWB to issue its Bonds to finance the adult local criminal justice facility. In addition, the Site Lease provides for nominal monetary consideration.

Terms: The Site Lease is entered into when the Bonds are issued by the SPWB as part of a bond sale; the timing of the bond sale is determined by the SPWB in consultation with the California State Treasurer as agent of sale for the bonds. The timing of the sale is largely driven by federal tax law considerations. The Site Lease expires when all of the Bonds issued to finance the adult local criminal justice facility have been paid.

- This is a standard financing lease and not subject to negotiation.

6. Facility Lease

Parties: SPWB and BSCC

Purpose: The SPWB leases the Site and the project back to BSCC for the term of the Bonds and, subject to availability of use and occupancy, the BSCC agrees to pay rent and other related obligations.

Consideration: Rent is paid in exchange for the right to use and occupy the adult local criminal justice facility.

Terms: The lease term runs as long as the Bonds issued for the adult local criminal justice facility are outstanding but not to exceed 35 years.

- The Facility Lease is entered into when the Bonds are issued by the SPWB; the timing of the bond sale is determined by the SPWB in consultation with the California State Treasurer and is largely driven by federal tax law considerations.
- Subject to the availability of the adult local criminal justice facility for occupancy, BSCC has the right to occupy and use it and in return agrees to pay rent. The SPWB has the right to enter and inspect the adult local criminal justice facility subject to customary security procedures.
- BSCC promises it will not abandon the adult local criminal justice facility.
- BSCC has the obligation to maintain (both ordinary and extraordinary) the adult local criminal justice facility during the term of the Facility Lease (including the costs of ordinary wear and tear) and arrange for the payment of all utilities.
- BSCC may make additions, betterments or improvements to the adult local criminal justice facility in a manner that will not result in abatement of rental.
- BSCC is obligated to maintain property casualty insurance and rental interruption insurance.
- BSCC agrees to annually provide the SPWB and the State Treasurer updated information about private activity use within the adult local criminal justice facility and agrees to cooperate and provide continuing disclosure information per the Continuing Disclosure Agreement.
- BSCC promises not to use or permit the use of the adult local criminal justice facility in any manner which would cause the bonds to be "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986.
- BSCC promises to obtain the consent of the SPWB to any assignment, subletting or transfer of its interest in the Facility Lease or any part thereof.
- In the event of breach by BSCC that goes uncured, the SPWB may evict BSCC and relet the adult local criminal justice facility.
- At the expiration of the Facility Lease (when all Bonds are paid), the property and improvements secured by the Facility Lease vest with BSCC. Concurrent with the termination of the Facility Lease, the

Ground Lease will also terminate and the property and improvements thereon vest with the County. BSCC will record any documentation necessary or desired to clarify the status of title.

- This is a standard financing lease and not subject to negotiation.

7. Facility Sublease

Parties: BSCC and County with the consent of the SPWB

Purpose: BSCC subleases the adult local criminal justice facility to the County for its use, operation and maintenance.

Consideration: Benefit to the state's public safety by addressing overcrowding and otherwise deficient adult local criminal justice facilities.

Terms: The Facility Sublease is entered into at the same time as, and with a term running concurrently with, the Facility Lease. Subject to the terms of the Facility Sublease, the County may use and occupy the adult local criminal justice facility.

- The Facility Sublease is subject to and subordinate to the Facility Lease.
- County promises it will not abandon the adult local criminal justice facility.
- County has the obligation to maintain (both ordinary and extraordinary) the adult local criminal justice facility during the term of the Facility Sublease (including the costs of ordinary wear and tear) and arrange for the payment of all utilities and applicable taxes or assessments. County must annually submit to SPWB and BSCC proof of its approved budget detailing the allocation of funds to maintain and operate the adult local criminal justice facility.
- Subject to the availability of the adult local criminal justice facility for occupancy, BSCC continues to pay rent under the Facility Lease.
- County may make additions, betterments or improvements to the adult local criminal justice facility in a manner that will not result in abatement of rental.
- BSCC will maintain the insurance policies required under the Facility Lease. County will maintain commercial general liability insurance and other insurance required by the SPWB or maintain an acceptable self-insurance program and provide proof of insurance to the SPWB and BSCC annually.
- County agrees to indemnify and hold the state harmless for any and all claims and losses accruing, resulting from or arising out of the County's use and occupancy of the adult local criminal justice facility.
- County agrees not to encumber the adult local criminal justice facility or otherwise subordinate its interest in the adult local criminal justice facility under the Facility Sublease.
- County agrees to annually provide BSCC, SPWB and the State Treasurer information about private activity use within the adult local

criminal justice facility and agrees to cooperate and provide continuing disclosure information per the Continuing Disclosure Agreement.

- County promises not to use or permit the use of the adult local criminal justice facility in any manner which would cause the SPWB Bonds to be "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986.
- County promises to obtain the consent of the SPWB and BSCC to any assignment, subletting or transfer of its interest in the Facility Sublease or any part thereof.
- In the event of breach by County that goes uncured, BSCC may evict County and together with the SPWB may relet the adult local criminal justice facility.

GENERAL DEFINITIONS

"Adult detention facility" means a Type II, III, or IV county detention facility as defined in Title 24, CCR.

"Adult local criminal justice facility" means a facility or portion thereof which may include any custodial housing, reentry, program, mental health, or treatment space necessary to manage the adult offender population consistent with the legislative intent described in Sections 17.5 and 3450 of the Penal Code, under the jurisdiction of the sheriff or county department of corrections.

"Beds" mean BSCC-rated beds that are dedicated to housing offenders in a jail facility's single and double occupancy cells/rooms or dormitories. Beds can also include special use beds for medical, mental health and disciplinary purposes. All beds must be planned and designed in conformance with the standards and requirements contained in Titles 15 and 24, CCR (state standards for county detention facilities).

"Build-to-Suit" has the meaning ascribed to such term in the General Considerations – Build-to-Suit section of this RFP.

"Cash (hard) contribution (match)" means the county's cash contributed to the project by the applicant for eligible expenditures as identified in the Request for Proposals and as listed in the Project Delivery and Construction Agreement and the BSCC Agreement.

"Concept drawings" means, with respect to a design-build project, any drawings or architectural renderings that may be prepared, in addition to performance criteria, in such detail as the participating county determines necessary to sufficiently describe the participating county's needs.

"Construction" means the building of the BSCC-approved project by the successful bidder/contractor. Construction generally begins with site preparation/excavation and ends with the completion of the project and acceptance by the county.

"Construction bidding" means the county receiving and accepting a bid to complete construction of the project.

"Construction documents" means architectural plans and specifications that are 100 percent complete and generally include: completed specifications, with bid proposal documents; completed construction drawings; and special interest items (corrections, modifications or additions made to the documents). This term correlates with the SPWB term; see also – "working drawings."

"Construction management" means a specialized, multidisciplinary function provided by a firm or individual acting as the county's representative with the responsibility to guide the county through all phases of delivery of the construction project. Construction management is an eligible project cost for state financing.

"County Contribution," in the context of this application, means, 1) the county's cash dedicated to the project (cash match) by the applicant for eligible expenditures as identified in the Request for Proposals and as listed in the Project Delivery and Construction Agreement and the BSCC Agreement and 2) the value of personnel, land or services dedicated to the project (in-kind match) by the applicant for eligible expenditures as identified in the Request for Proposals and as listed in the Project Delivery and Construction Agreement and the BSCC Agreement.

"County Construction Administrator" is the county official designated by the Board of Supervisors to oversee construction and administer the project agreements with the state.

"Design development" means architectural plans and specifications that are 50 percent complete and generally include: outline specifications (detention hardware, equipment and furnishings); floor plans (to scale with dimensions, room designation, references, wall types and ratings); building sections (heights and dimensions); interior elevations; and, preliminary structural, mechanical and electrical drawings. This term correlates with the SPWB term; see also – "preliminary plans."

"Financial plan" means arrangements by the county to fund its portion of the project cost, including reserves for cash flow during the construction period.

"In-kind (soft) contribution (match)" means the county contribution in the form of property value or management/administrative services contributed to the project by the applicant for eligible expenditures as identified in the Request for Proposals and as listed in the Project Delivery and Construction Agreement and the BSCC Agreement.

"Maximum security bed space" generally means those areas of a detention facility that are designed with multiple layers of security barriers and constructed for the housing of high security/high risk offenders. Maximum security housing usually holds offenders in single cells/rooms, but may involve double occupancy cells/rooms in certain situations. County security definitions vary and applicants should defer to county policy in categorizing bed space.

"Medium security bed space" generally means those areas of a detention facility designed with a single building security barrier that may be supplemented by an outside grounds perimeter security system monitored by facility staff. Medium security housing generally holds offenders in double or multiple occupancy cell/rooms or dormitories. County security definitions vary and applicants should defer to county policy in categorizing bed space.

"Minimum security bed space" generally means those areas of a detention facility with the lowest level of security barriers. Minimum security housing usually holds lower-risk offenders, typically in dormitory settings, and may or may not have a grounds perimeter security system monitored by facility staff. County security definitions vary and applicants should defer to county policy in categorizing bed space.

"Occupancy" means the placement and continued housing of offenders in a staffed and operational adult local criminal justice facility.

"Off-site" means outside of a reasonable buffer zone surrounding the perimeter of the security fence, adult local criminal justice facility and parking lot. Off-site costs (e.g., access roads, utilities development, etc.) are eligible as cash contribution.

"Operating cost analysis" means a 30-year analysis of anticipated operating costs (e.g. staff salary/benefits, transition team costs, utilities and maintenance) and the identification of, and revenue sources for, sufficient county funds needed to support the operation of the proposed facility. The operating cost analysis must be submitted for BSCC review with the design development plans and specifications. Following BSCC's review, the county shall submit the operating cost analysis to the Board of Supervisors for review and approval.

"Operational program statement" means a description of the intended operation of a local jail. The operational program statement must be submitted for BSCC review and acceptance with the schematic design drawings and specifications.

"Performance criteria" means, with respect to a design-build project, the information that fully describes the scope of the proposed project and includes, but is not limited to, the size, type, and design character of the buildings and site, the required form, fit, function, operational requirements, and quality of design, materials, equipment, and workmanship; and any other information deemed necessary to sufficiently describe the participating county's needs; including documents prepared pursuant to paragraph (1) of subdivision (d) of Section 20133 of the Public Contract Code.

"Preliminary plans" means a site plan, architectural floor plans, elevations, outline specifications, and a cost estimate, for each utility, site development, conversion, and remodeling project. The drawings shall be sufficiently descriptive to accurately convey the location, scope, cost, and the nature of the improvement being proposed. See also "design development."

"Program space" means space in which offenders receive services in the form of programming or treatment to reduce recidivism or as an alternative to incarceration.

"Project Financial Officer" is the county official designated by the Board of Supervisors to be responsible for all financial and accounting related project activities.

E: APPLICANT'S AGREEMENT

By signing this application, the authorized person assures that: a) the County will abide by the laws, regulations, policies and procedures governing this financing program, and b) certifies that the information contained in this proposal form, budget, narrative and attachments is true and correct to the best of his/her knowledge.

PERSON AUTHORIZED TO SIGN AGREEMENT

NAME	TITLE	
AUTHORIZED PERSON'S SIGNATURE		DATE

G: DESIGNATED COUNTY CONSTRUCTION ADMINISTRATOR

This person shall be responsible to oversee construction and administer the state/county agreements. (Must be county staff, not a consultant or contractor, and must be identified in the Board of Supervisors' resolution.)

COUNTY CONSTRUCTION ADMINISTRATOR

NAME		TITLE	
DEPARTMENT			TELEPHONE NUMBER
STREET ADDRESS			
CITY	STATE	ZIP CODE	E-MAIL ADDRESS

H: DESIGNATED PROJECT FINANCIAL OFFICER

This person is responsible for all financial and accounting project related activities. (Must be county staff, not a consultant or contractor, and must be identified in the Board of Supervisors' resolution.)

PROJECT FINANCIAL OFFICER

NAME		TITLE	
DEPARTMENT			TELEPHONE NUMBER
STREET ADDRESS			
CITY	STATE	ZIP CODE	E-MAIL ADDRESS

I: DESIGNATED PROJECT CONTACT PERSON

This person is responsible for project coordination and day-to-day liaison work with BSCC. (Must be county staff, not a consultant or contractor, and must be identified in the Board of Supervisors' resolution.)

PROJECT CONTACT PERSON

NAME		TITLE	
DEPARTMENT			TELEPHONE NUMBER
STREET ADDRESS			
CITY	STATE	ZIP CODE	E-MAIL ADDRESS

SECTION 2: BUDGET SUMMARY

BUDGET SUMMARY INSTRUCTIONS

Definitions of total project costs for purposes of this program (state reimbursed, county cash contribution and county in-kind contribution) can be found in the Project Costs, State Reimbursement and County Contribution (Match) section of the Request for Proposals (RFP). The county cash and in-kind contributions are collectively the county contribution. Those defined costs in the RFP shall be the guide for accurately completing this budget summary section.

In the Budget Summary Table that follows in part B of this section, indicate the amount of state financing requested and the amount of cash and/or in-kind contributions allotted to each budget line-item, in total defining the total project costs. While it is necessary to fully include each eligible project cost for state reimbursed and county cash contribution line items, it is not necessary to include county in-kind contribution amounts. All other eligible costs are considered hard costs and are to be claimed under state reimbursed or county cash contribution.

Inclusion of the in-kind contribution amounts is optional and counties may choose whether or not to include any of the amounts eligible under each in-kind contribution line item. The in-kind contribution line items represent only county staff salaries and benefits, or current fair market value of land. An appraisal of land value will be required after conditional award (or with proposal submittal if the county is seeking funding preference under the real estate due diligence criterion), and only if land value is included as part of the county's contribution.

The total amount of state financing requested cannot exceed 90 percent of the total project costs. The county contribution must be a minimum of 10 percent of the total project costs (unless the applicant is a small county petitioning for a reduction in the county contribution amount). County contributions can be any combination of cash or in-kind project costs. Small counties that petition for a reduction in the contribution amount must provide a minimum of five percent contribution of the total project costs. Small counties requesting a reduction in county contribution must state so in part A of this section.

State financing limits (maximums) for all proposals are as follows:

- **$80,000,000** for large counties;
- **$40,000,000** for medium counties; and
- **$20,000,000** for small counties.

A. SMALL COUNTY PETITION FOR REDUCTION IN CONTRIBUTION

A small county may petition the BSCC Board for a reduction in its county contribution. This proposal document will serve as the petition and the BSCC Board's acceptance of the county's contribution reduction, provided the county abides by all terms and conditions of this SB 1022 RFP process and receives a conditional award. Small counties requesting the reduction must still provide a minimum of five percent contribution that may be any combination of cash and/or in-kind contribution. If requesting a reduction in match contribution, check the box below to indicate the county's petition.

☐ **This proposal includes a petition for a county contribution reduction request as reflected in the proposal budget.**

B. BUDGET SUMMARY TABLE
(Report to nearest $1000)

LINE ITEM	STATE REIMBURSED	CASH CONTRIBUTION	IN-KIND CONTRIBUTION	TOTAL
1. Construction	$	$		$
2. Additional Eligible Costs*	$	$		$
3. Architectural	$	$		$
4. Project/Construction Management	$	$		$
5. CEQA		$		$
6. State Agency Fees		$		$
7. Audit		$	$	$
8. Needs Assessment		$	$	$
9. Transition Planning		$	$	$
10. County Administration			$	$
11. Land Value			$	$
TOTAL PROJECT COSTS	$	$	$	$
PERCENT OF TOTAL	%	%	%	100.00 %

* Additional Eligible Costs: This line item is limited to specified fees and moveable equipment and moveable furnishings (eligible for state reimbursement or cash contribution), and public art (eligible for cash contribution only).

Provide an explanation below of how the dollar figures were determined for each of the budget line items above that contain dollar amounts. Every cash contribution (match) line item shall be included with a reporting of the full amount budgeted, unless a line item is not an actual cash contribution project cost for the county. (In that case, indicate so below.) For each line item explanation below, include how state financing and the county contribution dollar amounts have been determined and calculated (be specific).

1. **Construction (includes fixed equipment and furnishings):**

2. **Additional Eligible Costs (specified allowable fees, moveable equipment and moveable furnishings, and public art):**
   a) **Define each allowable fee type and the cost of each:**
   b) **Moveable equipment and moveable furnishings total amount:**
   c) **Public art total amount:**
3. **Architectural:**
   a) **Describe the county's current stage in the architectural process:**
   b) **Given the approval requirements of the SPWB and associated state**

reimbursement parameters, define which portions/phases of the architectural services the county intends to seek state dollar reimbursement:

c) **Define the budgeted amount for what is described in b) above:**
d) **Define which portion/phases of the architectural services the county intends to cover with county contribution dollars:**
e) **Define the budgeted amount for what is described in d) above:**

4. **Project/Construction Management:**

5. **CEQA:**

6. **State Agency Fees (maximums: due diligence $16,000; SFM $35,000):**
   a) **Real estate due diligence fee:**
   b) **State Fire Marshal fee:**
7. **Audit – Define whether the county is intending to use independent county auditor (in-kind) or services of contracted auditor (cash) and amount budgeted:**

8. **Needs Assessment – Define whether work is performed by county staff (in-kind) or consultant (cash) :**

9. **Transition Planning – Define whether work is performed by county staff (in-kind) or consultant (cash):**

10. **County Administration:**

11. **Land Value:**

SECTION 3: PROJECT TIMETABLE

Prior to completing this timetable, the county must consult with all appropriate county staff (e.g., county counsel, general services, public works, county administrator) to ensure that dates are achievable. Please consult the State Capital Outlay/Board of State and Community Corrections Process Details and Timing Requirements section of the RFP for further information. Complete the table below indicating start and completion dates for each key event, including comments if desired. Note the required timeframes for specific milestone activities in this SB 1022 process. (The BSCC Board intends to make conditional awards at a January 2014 meeting.)

KEY EVENTS	START DATES	COMPLETION DATES	COMMENTS
Site assurance/comparable long-term possession within 90 days of award			
Real estate due diligence package submitted within 120 days of award			
State Public Works Board meeting – Project Established within 18 months of award			
Schematic Design with Operational Program Statement within 24 months of award (design-bid-build projects)			
Performance criteria or performance criteria and concept drawings with Operational Program Statement within 30 months of award (design-build projects)			
Design Development (Preliminary drawings) with Staffing Plan			
Staffing/Operating Cost Analysis approved by the Board of Supervisors			
Construction Documents (Working drawings)			
Construction Bids			
Notice to Proceed within 42 months of award			
Construction (maximum 3 years to complete)			
Staffing/Occupancy within 90 days of completion			

SECTION 4: FACT SHEET

To synopsize and capture key information from Section 5: Narrative, applicants must complete this Fact Sheet. Minimal information is requested. Narrative information or explanations are not to be included on this Fact Sheet nor as part of the tables in this section. Explanations of what is provided in these tables may be included in the Narrative section of the Proposal Form. Proposal narratives may include reference back to one or more of these specific tables (e.g., refer to Table 4 in the Fact Sheet), rather than repeat information in the narrative that is already provided in the tables.

Tables 1 through 7 below constitute the Fact Sheet, which shall be provided with each proposal submittal, without regard as to whether the proposal includes bed construction. These tables of information shall be used by the raters in conjunction with the information provided in the proposal narrative (see Narrative section of the Proposal Form).

The information requested in this Fact Sheet pertains to those facilities (Type II, III and IV), approaches and programs under the jurisdiction of the sheriff or local department of corrections.

Tables 1 – 4, 6 and 7: For Average Daily Population (ADP), provide the average number per day for the first six months of 2013. For programs that started after January 1, 2013, provide the average number per day for the length of time the program was in effect (after the name of the program, provide the starting date). The same time period parameters pertain to Assessments per Month. "Lack of space" releases in Table 1 refers to the total of non-sentenced inmates released and sentenced inmates released early.

Table 3: The term "approaches" includes home detention, not incarcerating misdemeanants, etc., or other policies/procedures and approaches that do not include specific measures influencing recidivism reduction.

Tables 4, 5 and 7: The term "programming" refers to the utilization of formal programs that specifically incorporate measures to influence recidivism reduction.

Table 1: Provide the following information.		
1.	**County general population**	
2.	**Number of detention facilities**	
3.	**BSCC-rated capacity of system**	
4.	**ADP (Secure Detention) of system**	
5.	**ADP (Alternatives to Detention) of system**	
6.	**Percentage felony inmates of system**	

7.	Percentage non-sentenced inmates of system	
8.	Arrests per month	
9.	Bookings per month of system	
10.	"Lack of space" releases per month	

Table 2: Provide the name, BSCC-rated capacity (RC) and ADP of the adult detention facilities in your jurisdiction.			
	Facility Name	RC	ADP
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

Table 3: List approaches currently in place to reduce the need for beds, and ADP for each.		
	Pre-Trial Approaches	ADP
1.		
2.		
3.		
4.		
5.		
6.		
	Sentenced Offender Approaches	ADP
1.		
2.		
3.		
4.		
5.		
6.		

Table 4: List the current offender programming in place and the ADP in each program.		
	Pre-Trial Program	**ADP**
1.		
2.		
3.		
4.		
5.		
6.		
	Sentenced Offender Program	**ADP**
1.		
2.		
3.		
4.		
5.		
6.		

Table 5: List the offender programming gaps and deficiencies.	
	Gaps and Deficiencies
1.	
2.	
3.	
4.	
5.	
6.	

Table 6: List the offender assessments used for the purpose of jail population management.		
	Assessment Tools	**Assessments per Month**
1.		
2.		
3.		
4.		
5.		
6.		

Table 7: List the offender assessments used for determining programming.		
	Assessment Tools	**Assessments per Month**
1.		
2.		
3.		
4.		
5.		
6.		

SECTION 5: NARRATIVE

As defined previously in the RFP, there are two proposal types in this funding process. What follows below are the narrative points that must be discussed within each of the five major topic areas. Please note:

- **Beds and Program Space Proposals:** Proposals that include any type of bed construction (remodel/renovation or new construction) shall address all of the points under each of the five major topic areas below.

- **Program Space Proposals:** Proposals that do not include any type of bed construction shall address all five major topic areas, skipping those areas within 1, 2 and 3 that specifically fall under the Bed Construction heading. The All Projects heading under 2 does apply.

Attach up to the maximum number of 35 pages of double-spaced narrative (no smaller than 12 point font) ordered in the subject areas indicated within the proposal type. If it can be written in less than the maximum pages, please do so (avoid "filler"). Up to 10 additional pages of essential appendices may be included at the discretion of the applicant. Appendices cannot be used to give required narrative information. Pictures, charts, illustrations or diagrams are encouraged in the narrative or appendices to assist reviewers in fully understanding the proposed scope of work. Data sources must be identified.

If the project is for a regional facility (must meet the requirements outlined in the Regional Facilities section of the RFP), clearly indicate so. Include the names of the partnering counties and their individual data which supports the project and responds to the requested narrative points.

1.	**PROJECT NEED**
Bed Construction	
B: 1.01	Describe the findings of the needs assessment completed by the county.
B: 1.02	Provide a county jail system overview (e.g.; capacity, ADP and other relevant factors), including a description of other current or planned construction. If the county has an AB 900 award(s), indicate such and identify the number of beds to be constructed and current stage of planning or construction for this project(s).
B: 1.03	Describe the system issues anticipated to be remedied by the new construction, such as: overcrowding, medical, or mental health beds.
B: 1.04	Describe the current trends in the number of arrests, bookings, releases due to lack of space and other relevant factors as they relate to the need for beds.
B: 1.05	Discuss the current approach to reducing the need for beds, including programs and alternatives to incarceration.
B: 1.06	Provide data showing the effectiveness/impacts of these alternatives.

B: 1.07	Describe any plans underway, or future plans, to implement alternatives to incarceration and their anticipated results.
Program Space Construction	
PS: 1.01	Describe the process for determining the need for program space.
PS: 1.02	Describe the current approach to offender programming (i.e., use of current program space, types of programs, and services) for custody and non-custody offenders.
PS: 1.03	Describe what least restrictive alternatives have been put in place to address the needs of the population intended to be served by this proposal.
PS: 1.04	Describe the gaps and deficiencies in current programming for custody and non-custody offenders, and which of these gaps or deficiencies will be addressed with proposed program space construction funding.
PS: 1.05	Describe the approach taken to determining the kind of programming that will take place in the new program space.
PS: 1.06	Provide information and data supporting the county's need for program space.
PS: 1.07	Indicate the approach to alternatives to incarceration and how the program will assist in managing the jail population.
PS: 1.08	Describe the need for programming that could assist with the jail population management.

2.	**SCOPE OF WORK**
All Projects	
A: 2.01	Detail the full scope of work that is the subject of this proposal, including a comprehensive description of the number and types of beds (if any), program spaces, and other core and ancillary spaces; indicate whether this is new stand-alone construction, an addition to an existing facility, or space that is being remodeled or renovated.
Bed Construction	
B: 2.01	Describe the planning process that resulted in this bed construction scope of work.
B: 2.02	Describe the relationship between stated needs and the planned construction.
B: 2.03	Describe the anticipated beneficial outcomes of the new bed construction.
B: 2.04	Define the staffing that will be required to operate the new construction.
Program Space Construction	
PS: 2.01	Describe the planning process used to develop the design for the construction of program space.
PS: 2.02	Describe the relationship between stated needs and the proposed program space construction.
PS: 2.03	Define the features of this program space construction that make it suitable for the intended programming.

PS: 2.04	Describe plans to implement and operate programs in the space.
PS: 2.05	Describe the anticipated beneficial outcomes of the new program space construction.

3.	**OFFENDER MANAGEMENT AND PROGRAMMING**
Bed Construction	
B: 3.01	Describe how the proposed construction will address the county's offender management goals regarding use of secure detention
B: 3.02	Describe how the proposed bed construction aligns with the Community Corrections Partnership (CCP) plan.
B: 3.03	Describe the use of, or plans to use, offender assessment(s) and other interventions to address jail population management, including objective tools or instruments to manage the offender population, such as pretrial assessments, etc.
B: 3.04	Describe the county's planned construction in relation to the expected need for beds in the future.
Program Space Construction	
PS: 3.01	Describe how this program space construction will address the county's offender management goals.
PS: 3.02	Describe how the program space construction aligns with the CCP plan.
PS: 3.03	Describe the programming to be conducted in the new program space.
PS: 3.04	Describe how the program space will foster a quality reentry model and seamless reentry process.
PS: 3.05	Describe collaborative partnerships that will provide services within the program space and provide continuity through the reentry and community supervision process.
PS: 3.06	Describe the sources of financial support (i.e., Medi-Cal, other federal sources, etc.) that will be accessed to aid in the delivery of programs.
PS: 3.07	Describe the offender assessment(s) and the process for determining the programming offenders (custody and non-custody) will receive.
PS: 3.08	Describe the approach to the principles and objectives of evidence-based programming that will be incorporated to reduce recidivism, including program evaluation.
PS: 3.09	Define the staff qualifications necessary to present the planned programming (e.g., staff training certification).
PS: 3.10	Describe the target population and estimated numbers of individuals to be served daily and annually in the program space. Describe how you arrived at those estimates.

4.	**ADMINISTRATIVE WORK PLAN**
4.01	Describe the plan for project management and administration, including key positions and responsibilities.
4.02	Describe the current state of the county's project planning process.

4.03	Describe the county's readiness to proceed with the project.
4.04	Describe the construction project timeline.

5.	**BUDGET REVIEW AND REASONABLENESS**
5.01	Justify the amount of state financing requested for the planned construction.
5.02	Describe the anticipated benefits/impact of the construction in relation to construction costs (including any fiscal benefits).
5.03	Describe steps that the county has taken to minimize costs of this project.
5.04	Describe efforts to leverage other sources of funds (e.g., federal) for program delivery.
5.05	Detail the cost effectiveness of this construction project, including from a population management perspective.

SECTION 6: BOARD OF SUPERVISORS' RESOLUTION

All counties applying for SB 1022 financing must include a Board of Supervisors' resolution with the proposal submittal. The resolution must include the requisite components as outlined below. ("A" applies only to counties seeking the funding preference as described in the RFP – Funding Preference section.) For counties submitting multiple proposals (which requires participation in a regional facility as described in the RFP), separate resolutions for each proposal, with the necessary language contained in each resolution, is required.

A. All counties seeking to satisfy one or more of the funding preference criteria must provide the resolution language outlined below. Criterion #1 is mandatory if any funding preference is sought. Criteria #2, 3 and 4 are optional.

PREFERENCE CRITERION #1: Adequate County Contribution Funds
In addition to all of the required documentation identified in the RFP, the following language must appear in the resolution:

The County of _____ (the "County") is seeking funding preference for its proposed project within the Adult Local Criminal Justice Facilities Construction Financing Program (the "SB 1022 Financing Program"). As such, the Board of Supervisors of _____ County does hereby represent, warrant and covenant as follows:

1) *Lawfully Available Funds*. The county cash contribution funds, as described in the documentation accompanying the County's SB 1022 Financing Program Proposal Form, have been derived exclusively from lawfully available funds of the County.

2) *County Cash Contribution Funds Are Legal and Authorized*. The payment of the county cash contribution funds for the proposed adult local criminal justice facility project (the "Project") (i) is within the power, legal right, and authority of the County; (ii) is legal and will not conflict with or constitute on the part of the County a material violation of, a material breach of, a material default under, or result in the creation or imposition of any lien, charge, restriction, or encumbrance upon any property of the County under the provisions of any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan, installment sale agreement, contract, or other material agreement or instrument to which the County is a party or by which the County or its properties or funds are otherwise subject or bound, decree, or demand of any court or governmental agency or body having jurisdiction over the County or any of its activities, properties or funds; and (iii) have been duly authorized by all necessary and appropriate action on the part of the governing body of the County.

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

4) *Authorization to Proceed with the Project*. The Project proposed in the County's SB 1022 Financing Program proposal is authorized to proceed in its entirety when and if state financing is awarded for the Project within the SB 1022 Financing Program.

PREFERENCE CRITERION #2: Real Estate Due Diligence
The following statement must appear in the resolution:

The County is seeking funding preference for submittal of the complete initial real estate due diligence package.

PREFERENCE CRITERION #3: CEQA Compliance
One of the following two statements must appear in the resolution:

The County is seeking funding preference for submittal of documentation evidencing that compliance with CEQA has been fully completed for the proposed project, and further is certifying that all related statutes of limitation have expired without challenge.

Or:

The County is seeking funding preference for submittal of documentation evidencing that compliance with CEQA has been fully completed for the proposed project, and is certifying that all challenge has been completely resolved in a manner that allows the project to move forward as proposed.

PREFERENCE CRITERION #4: Authorization of Project Documents
The following language must appear in the resolution; the bracketed and underlined information must be updated as appropriate to be consistent with the person(s) each county authorizes to execute the respective project documents:

The County is seeking funding preference associated with review of and authorization to execute the project documents required within the SB 1022 Financing Program. As such, the Board of Supervisors of _____ _____ County does hereby approve the form of the Project Delivery and Construction Agreement, the Board of State and Community Corrections Jail Construction Agreement, the Ground Lease, the Right of Entry for Construction and Operation, and the Facility Sublease. Each of the [Chairman of the Board of Supervisors, the Chief Executive Officer of the County and the Chief Operations Officer of the County], or their designees (collectively, the "Authorized Officers"), acting alone, is hereby authorized for and in the name of the County to execute, and the Clerk to the Board of Supervisors is authorized to attest, the Project Delivery and Construction Agreement, the Board of State and Community Corrections Jail Construction Agreement, the Ground Lease, the Right of Entry for Construction and Operation, and the Facility Sublease, in substantially the form hereby approved, with such additions thereto and changes therein as are required by the BSCC or the State Public Works Board to effectuate the SB 1022 Financing Program and as condition to the issuance of the Bonds. Approval of such changes shall be conclusively evidenced by the execution and delivery thereof by any one of the Authorized Officers each of whom, acting alone, is authorized to approve such changes.

Each of the Authorized Officers is authorized to execute these respective agreements at such time and in such manner as is necessary within the SB 1022 Financing Program. Each of the Authorized Officers is further authorized to execute, acknowledge and deliver any and all documents required to consummate the transactions contemplated by the Project Delivery and Construction Agreement, the Board of State and Community Corrections Jail Construction Agreement, the Ground Lease, the Right of Entry for Construction and Operation, and the Facility Sublease.

B. For all counties, except as otherwise noted below, the Board of Supervisors' resolution for the project shall contain the following:

- Names, titles and positions of County Construction Administrator, Project Financial Officer and Project Contact Person.

- Authorization of appropriate county official to sign the Applicant's Agreement (page two of Proposal Form) and submit the proposal for funding.

- Assurance that the County will adhere to state requirements and terms of the agreements between the County, the Board of State and Community Corrections and the State Public Works Board in the expenditure of any state financing allocation and county contribution funds.

- Assurance that the County has appropriated, or will appropriate after notification of conditional award of financing but before state/county financing agreements, the amount of county cash contribution identified by the County on the financing program proposal form submitted to the Board of State and Community Corrections; the County acknowledges the need to identify the source of funds for county cash contribution, and assures that the cash match contribution does not supplant (replace) funds otherwise dedicated or appropriated for construction activities. (*This section does not apply to counties seeking the funding preference.*)

- Assurance that the County will safely staff and operate the facility that is being constructed (consistent with Title 15, California Code of Regulations) within ninety (90) days after project completion.

- For Beds and Program Space proposals (that are NOT regional facility projects as defined in this RFP), include the following certification: The County certifies that it is not and will not be leasing housing capacity in this SB 1022 financed adult local criminal justice facility to any other public or private entity for a period of 10 years beyond the completion date of the adult local criminal justice facility.

- For Beds and Program Space proposals (that ARE regional facility projects as defined in this RFP), include the following certification: The County certifies that it is not and will not be leasing housing capacity in this SB 1022 financed adult local criminal justice facility for profit purposes to any other public or private entity for a period of 10 years beyond the completion date of the adult local criminal justice facility.

- (Provide the following site assurance for the adult local criminal justice facility at the time of proposal or not later than ninety (90) days following the Board of State and Community Corrections' notice of conditional award): Assurance that the County has project site control through either fee simple ownership of the site or comparable long-term possession of the site, and right of access to the project sufficient to assure undisturbed use and possession of the site, and will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site of facility subject to construction, or lease the facility for operation to other entities, without permission and instructions from the Board of State and Community Corrections. (*This section does not apply to counties using a build-to-suit arrangement.*)

- Attestation to $_____ as the current fair market land value for the proposed new or expanded facility. (This can be claimed for on-site land value for new facility construction, on-site land value of a closed facility that will be renovated and reopened, or on-site land value used for expansion of an existing facility. It cannot be claimed for land value under an existing operational detention facility. If claimed as in-kind contribution, an independent appraisal will be required as a pre-agreement condition.

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PROJECT DELIVERY AND CONSTRUCTION AGREEMENT
AB 900 JAIL FINANCING PROGRAM
(FOR A JAIL FACILITY
LOCATED IN _____ COUNTY)

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

WHEREAS, pursuant to Chapter 3.12 of Part 10b of Division 3 of Title 2 of the California Government Code (commencing at Section 15820.91) (the "Law"), the Board is authorized to finance the acquisition, design and construction of a jail facility approved by the BSCC pursuant to Section 15820.916 of the California Government Code (the "AB 900 Jail Financing Program"); and

WHEREAS, pursuant to California Code of Regulations Title 15, Division 1, Chapter 1, Subchapter 6 and this Agreement and other agreements relating to this Project, the cost of certain design and construction activities will be eligible for reimbursement under the AB 900 Jail Financing Program; and

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

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

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

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

Participating County, with the consent of the Board and the Department, intend to enter into an agreement to assist in complying with BSCC's rules and regulations concerning jail construction for the AB 900 Jail Financing Program (the "BSCC Agreement"); and

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

WHEREAS, prior to authorization by the Board of actions to be taken to provide for the Interim Loan, the Department shall have certified to the Board that the Participating County is a participating county as required by Section 15820.91 of the California Government Code and the BSCC shall have approved the Project in accordance with Section 15820.911 of the California Government Code; and

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

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

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

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

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

WHEREAS, in the event the Board is unable to issue the Bonds to finance the Project and the Interim Loan has been provided, the Department shall commit a sufficient amount of its annual support appropriation to repay the Interim Loan and any other interim financing costs associated with the Interim Loan.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements of

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the Parties set forth herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE 1

GENERAL

1.1 General Covenants, Acknowledgements and Agreements of the Parties.

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

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

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

1.2 Approvals, Consents and Actions Necessary to Maintain Eligibility in the AB 900 Jail Financing Program. The Participating County acknowledges its eligibility for Project financing pursuant to the AB 900 Jail Financing Program is subject to and contingent upon the following approvals, consents and actions by the Board and Finance;

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

(b) A determination by the Board that the Participating County match as set forth in Article 3 has been satisfied as required by the Law and the source of the Cash (hard) Match (as hereinafter defined) and any associated security or terms related thereto has been

determined by the Board to be compatible with the financing of the Project pursuant to the AB 900 Jail Financing Program;

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

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

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

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

(g) The Department has provided the Board the certification required by Section 15820.91 of the California Government Code, which certification the Department intends to provide upon satisfaction of the required statutory and regulatory conditions;

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

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

(j) The sale of the Bonds.

1.3 AB 900 Jail Lease Revenue Bond Financing. State financing for the AB 900 Jail Financing Program is predicated on the Board's ability to issue Bonds for the Project. The Board, acting in good faith, intends to authorize the request for the Interim Loan and, subject to approvals, consents, and actions set forth in section 1.2, to issue Bonds for the Project. As further protection for the Participating County, Finance, acting in good faith, will not approve the Participating County to proceed to bid until and unless the Board has approved the Project and secures interim or permanent financing for the State's share of the Project's costs. The Agencies

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will make reasonable and good faith efforts to assist in gaining assurance that the Site, the Project, the Participating County's ultimate use of the Project and the Cash (hard) Match (as hereinafter defined) are developed and implemented in such a way to facilitate the financing of the Project through the issuance and sale of the Bonds.

Prior to the Board's authorization to request the Interim Loan, the Department shall have certified to the Board that the Participating County is a participating county as required by Section 15820.91 of the California Government Code and the BSCC shall have approved the design and construction of the Project in accordance with Section 15820.911 of the California Government Code.

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

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

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

1.5 Representations and Warranties of the Participating County.

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

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

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

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

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

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

1.6 Representations and Warranties of the Board.

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

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

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

(d) The execution and delivery of this Agreement on behalf of the Board will

bind and obligate the Board to the extent provided by the terms hereof.

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

1.7 Representations and Warranties of the Department and the BSCC.

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

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

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

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

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

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

1.8 Compliance with Terms and Conditions of the Project Documents. The Parties

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

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

1.10 Indemnity. As required by Section 15820.911(d) of the California Government Code, the Participating County hereby agrees to indemnify, defend and save harmless the State, including but not limited to the Board, the Department and the BSCC, and each of their respective officers, governing members, directors, officials, employees, subcontractors, consultants, and agents (collectively, "Indemnitees") for any and all claims and losses arising at any time out of the acquisition, design, construction, operation, maintenance, use and occupancy of the Project. The Participating County shall not be obligated to provide indemnity or defense where the claim arises out of the gross negligence or willful misconduct of the Indemnitees. These obligations shall survive any termination of this agreement.

1.11 Assignment or Subletting of the Facility.

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

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

(i) Any sublease of the Facility by the Participating County shall explicitly provide that such sublease is subject to all rights of the Department and the Board under the Facility Sublease, including, the right to re-enter and re-let the Facility or terminate

such lease upon a default by the Participating County; and

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

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

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

ARTICLE 2

TERM AND TERMINATION OF AGREEMENT

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

2.2 Termination of Agreement.

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

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

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required to cure such breach in a diligent and commercially reasonable manner;

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

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

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

(v) In the event the Board determines the Participating County is no longer eligible for Project financing under the AB 900 Jail Financing Program as set forth in section 1.2 hereof; or

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

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

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

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

(iii) In the event the Board determines the Participating County is no longer eligible for Project financing under the AB 900 Jail Financing Program as set forth in section 1.2 hereof.

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

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

(e) *No Impairment.* Nothing in this Article 2 in any way alters or limits the authority of the Agencies to withhold all or a portion of the Maximum State Financing (as hereinafter defined) in accordance with law or otherwise as permitted hereunder or any other

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right or remedy available to the State at law or in equity for breach of this Agreement.

ARTICLE 3

COST SHARING OF THE PROJECT

3.1 Financing Eligibility of the Project.

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

(b) *Cash (hard) Match.* Subject to all terms and provisions of this Agreement, the Participating County agrees to appropriate and spend cash (hard) matching funds for the Project as provided in the BSCC Agreement ("Cash (hard) Match"). **Exhibit E-1** is a detailed description of and certification related to the source or sources of the Cash (hard) Match and any associated security or terms related thereto as approved by the Agencies, which detail and assurance of has been deemed sufficient by the Board to determine that the use of such funds as the Cash (hard) Match is compatible with the financing of the Project pursuant to the AB 900 Jail Financing Program. Any modifications to the source or sources of the Cash (hard) Match or the associated security and terms related thereto as described in **Exhibit E-1** must be approved by the Agencies. The Participating County shall ensure that all Cash (hard) Match is encumbered prior to Finance approval of proceeding to bid the Construction Contract (as hereinafter defined).

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

3.2 Excess Project Costs. In no event shall any Project scope, cost, budget or schedule changes be authorized by the Participating County which would cause the amount of Total Project Costs to be exceeded unless the Participating County covenants to fund such excess with lawfully available funds and the Participating County first obtains the consent of the

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

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

ARTICLE 4

PROJECT SCOPE, COST AND SCHEDULE

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

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

(a) More than minor changes which affect the design, project configuration, cost or schedule of the Project;

(b) A delay or change in the substantial completion or final completion dates for the Project;

(c) A more than minor change to the design, location, size, capacity or quality of major items of equipment;

(d) A change in approved budget categories, or movement of dollars between budget categories as indicated in the Board approved scope cost and schedule as identified in **Exhibit A.**

As used herein "substantial" is as defined in Section 6863 of the State Administrative

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

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

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

ARTICLE 5

BIDDING AND CONSTRUCTION PHASE OF THE PROJECT

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

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

5.3 Completion of the Project. The Participating County acknowledges it is obligated to undertake and complete the construction of the Project in compliance with all of the applicable terms and conditions of the Project Documents and the Participating County agrees to use its best efforts to cause the completion of construction of the Project in compliance with the applicable terms and conditions of such documents. The Participating County agrees to complete the Project in accordance with this Agreement and consistent with the scope, cost and schedule

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established by the Board and attached hereto in **Exhibit A**, as such scope, cost and schedule may be modified with the approval of Finance and the recognition of the Board.

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

5.5 Insurance.

(a) Insurance Obligations of the Participating County.

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

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

(ii) Requirements after construction completion. The Participating County, at its own cost and expense, shall secure and maintain or cause to be secured and maintained from an insurance company or companies approved to do business in the State and maintain after completion of construction and/or when placing the Project in operation, the following insurance coverage for the Project:

a. General liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence. Evidence of such insurance shall be on a General

Liability Special Endorsement form and should provide coverage for premises and operations, contractual, personal injury and fire legal liability;

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

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

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

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

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

(b) Insurance Obligations of the Department. If the insurance required in (a)(i) expires in accordance with its terms prior to execution of the Facility Sublease, the Department shall, at its own cost and expense, procure and maintain or cause to be procured and maintained (i) property casualty insurance in an amount equal to one hundred percent (100%) of the then current replacement cost of the Project, excluding the replacement cost of the unimproved real property constituting the Site (except that such insurance may be subject to a deductible clause not to exceed [five hundred thousand dollars ($500,000) or two million five hundred thousand dollars ($2,500,000)] for any one loss), and (ii) earthquake insurance (if such insurance is available on the open market from reputable insurance companies at a reasonable cost) on any structure comprising part of the Project in an amount equal to the full insurable value of such structure or the amount of the attributable portion of the Interim Financing, whichever is less(except that such insurance may be subject to a deductible clause not to exceed [five hundred thousand dollars ($500,000) or two million five hundred thousand dollars ($2,500,000)] for any one loss). The extended coverage endorsement shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, vandalism and malicious

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mischief and such other hazards as are normally covered by such endorsement. The property casualty insurance shall be in a form satisfactory and with carriers which are acceptable to the Board.

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

ARTICLE 6

CERTAIN OBLIGATIONS POST PROJECT COMPLETION

6.1 Private Use of the Project.

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

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

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

ARTICLE 7

RECORD RETENTION

7.1 Establishment of Official Project File. The Participating County shall establish an official file for the Project (the "Official Project File"). The file shall contain adequate documentation of all actions that have been taken with respect to the Project, in accordance with generally accepted government accounting principles and the requirements for record retention for capital projects constructed with the proceeds of tax exempt bonds. The Participating County will provide a copy of such file to the Department upon termination of this Agreement. The documents to be retained shall include, but is not limited to contracts, payment of invoices, transfer of funds and other related accounting records.

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

ARTICLE 8

MISCELLANEOUS

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

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

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

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

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

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

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

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warranty made herein by such Party.

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

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

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

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

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

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

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

If to the Participating County: County of [redacted]
[Street Address]

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[City, State and Zip Code]
Attention: _____
Facsimile: _____

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

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

8.13 Exculpation. Notwithstanding anything to the contrary contained in this Agreement, in any Bond Document, Project Document or other certificate, agreement, document or instrument executed in connection with the AB 900 Jail Financing Program, the liability of the Board hereunder shall be limited to and satisfied solely out of proceeds of the Interim Loan, if any, or the Bonds, if any, permitted to be used for such purpose. Except as provided above, the Participating County shall not have the right to obtain payment from the Agencies or from any other assets of the Agencies. The Participating County shall not enforce the liability and obligation of the Agencies to perform and observe the obligations contained in this Agreement, or any other documents delivered in connection herewith in any action or proceeding wherein a money judgment in excess of the available proceeds of the foregoing sources shall be sought against the Agencies.

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

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

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

STATE PUBLIC WORKS BOARD OF
THE STATE OF CALIFORNIA

By: _____
[Name]
Executive Director or Deputy Director

DEPARTMENT OF CORRECTIONS AND
REHABILITATION OF THE STATE OF
CALIFORNIA

By: _____
[Name]
[Title]

BOARD OF STATE AND COMMUNITY
CORRECTIONS OF THE STATE OF
CALIFORNIA

By: _____
[Name]
Executive Director or Authorized Designee

COUNTY OF [redacted]

By: _____
[Name]
[Title]

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EXHIBIT A

PROJECT SCOPE, COST AND SCHEDULE DESCRIPTION

[Include narrative description of Project per Section 4.1]

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EXHIBIT B

FORM OF GROUND LEASE

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EXHIBIT C

FORM OF RIGHT OF ENTRY FOR CONSTRUCTION AND OPERATION

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EXHIBIT D

FORM OF FACILITY SUBLEASE

DRAFT

EXHIBIT E-1

DESCRIPTION OF PARTICIPATING COUNTY FUNDING

Cash (hard) Match

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EXHIBIT E-2

DESCRIPTION OF PARTICIPATING COUNTY FUNDING

In-kind (soft) Match

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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

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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) 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;

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(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:
Telephone:
Facsimile:
Email:

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:
Title:
Address:
City, State, Zip:
Telephone:
Facsimile:
Email:

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:
Title:
Address:
City, State, Zip:
Telephone:
Facsimile:
Email:

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

ARTICLE 3. PROJECT DOCUMENTS AND APPLICABLE LAWS.

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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.

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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 wavier 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

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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 of the Schedule of Values as specified in Exhibit B.

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

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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]

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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: _____

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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).

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B. Participating County must provide a minimum of at least _____ percent (___%) 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

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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.

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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 of the Schedule of Values as specified in Exhibit B. 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.

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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).

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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

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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.

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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.

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[FORM OF GROUND LEASE]

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

[Space above for Recorder's use]

GROUND LEASE

by and between the

[PARTICIPATING COUNTY]
as Landlord,

and

DEPARTMENT OF CORRECTIONS AND REHABILITATION
OF THE STATE OF CALIFORNIA,
as Tenant

Dated as of _____, 20__

[PROJECT NAME]
[_____ COUNTY]

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 Section 6103 and 27383 of the California Government Code

GROUND LEASE

THIS GROUND LEASE, dated as of _____, 20__ for reference only (this "Ground Lease"), is entered into by and between COUNTY OF _____ (the "Participating County"), as Landlord, and the DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA, an entity of the State of California (the "Department"), as Tenant. The Participating County and the Department are sometimes referred to as the "Parties", or singularly each a "Party".

RECITALS

WHEREAS, pursuant to Chapter 3.11 of Part 10b of Division 3 of Title 2 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 Corrections Standards Authority (the "CSA") pursuant to Section 15820.906 and following, as amended, (the "AB 900 Jail Financing Program"), the Participating County, the Department, CSA and the Board entered into the Project Delivery and Construction Agreement (the "PDCA") dated as of _____, 20__, for reference only; and

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

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

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

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

WHEREAS, concurrently with the execution of this Ground Lease, the Department as the Tenant and the Participating County as the Landlord, have entered into a Right of Entry for Construction in substantially the form attached as Exhibit C to the PDCA, authorizing the Participating County to enter the Site for the purpose of constructing the Project; and

WHEREAS, if the Participating County maintains its eligibility in the AB 900 Jail Financing Program, and the Board in its sole discretion, is able to issue the Bonds to finance the Project in its typical and customary manner, the Department will concurrently sublease the Site to the Board, (the "Site Lease"), and enter into a Facility Lease (the "Facility Lease") providing for the Board to sublease to the Department the Site and the Project (together the "Facility"). The Site Lease and the Facility Lease will provide security for the Bonds to be issued by the Board under an

indenture (the "Indenture") between the Board and the Treasurer of the State, as trustee (the "State Treasurer"); and

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

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

SECTION 1. Definitions.

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

(a) "AB 900 Jail Financing Program" has the meaning given to such term in the Recitals.

(b) "Abatement Event" shall have the meaning given to such term in the Facility Lease.

(c) "Board" means the State Public Works Board of the State of California, an entity of state government of the State.

(d) "Bond Documents" mean each and every document evidencing the Bonds, including, but not limited to, the Site Lease, the Facility Lease, the Facility Sublease, and the Indenture.

(e) "Bonds" has the meaning given to such term in the Recitals.

(f) "Claims" has the meaning given to such term in Section 23 of this Ground Lease.

(g) "CSA" has the meaning given to such term in the Recitals.

(h) "Department" has the meaning given to such term in the preamble.

(i) "DGS" means the Department of General Services of the State of California, an entity of state government of the State,

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

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

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

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

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

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

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

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

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

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

(t) "Indemnitees" has the meaning given to such term in Section 23 of this Ground Lease.

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

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

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

(x) "Participating County" has the meaning given to such term in the preamble.

(y) "Parties" has the meaning given to such term in the preamble.

(z) "Party" has the meaning given to such term in the preamble.

(aa) "PDCA" has the meaning given to such term in the Recitals.

(bb) "Permitted Encumbrances" has the meaning given to such term in Subsection 3(b)(4) of this Ground Lease.

(cc) "Project" means the buildings, structures, works and related improvements constructed or to be constructed on the Site, as are more particularly described in Exhibit A attached hereto, and any and all additions, betterments, extensions and improvements thereto.

(dd) "Resolution" has the meaning given to such term in Subsection 3(b)(1) of this Ground Lease.

(ee) "Right of Entry for Construction" has the meaning given to such term in the Recitals.

(ff) "Right of First Offer" has the meaning given to such term in Section 13 of this Ground Lease.

(gg) "Site" has the meaning given to such term in the Recitals.

(hh) "Site Lease" has the meaning given to such term in the Recitals.

(ii) "State" means the state government of the State of California.

(jj) "State Treasurer" has the meaning given to such term in the Recitals.

(kk) "Tenant" has the meaning given to such term in the preamble.

(ll) "Term" has the meaning given to such term in Section 10 of this Ground Lease.

SECTION 2. Effective Date.

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

SECTION 3. Representations, Warranties and Covenants.

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

(1) The Department has full legal right, power and authority to enter into this Ground Lease as Tenant and to carry out and consummate all transactions contemplated by this Ground Lease and by proper action has duly authorized the execution and delivery of this Ground Lease. The Department shall cause an opinion, dated as of [the date in the preamble of this

Ground Lease] and in substantially the form of Exhibit D attached to this Ground Lease, to be delivered to the Board contemporaneously with the Department's execution of this Ground Lease;

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

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

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

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

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

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

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

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

(6) There exists no litigation or other proceeding pending or threatened against the Participating County except as identified in Exhibit F, attached hereto, that, if determined

adversely, would materially and adversely affect the ability of the Participating County to perform its obligations under this Ground Lease.

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

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

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

(10) There are no and have been no:

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

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

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

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

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

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

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

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

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

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

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

(b) Access, Utilities and Repairs Easement. As of the Effective Date, the Participating County agrees to grant to the Department, for the use, benefit and enjoyment of the Department and its lessees, successors and assigns, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public using or visiting the Site or the Project, a non-exclusive easement over, across and under the Easement Property for the purpose of: a) ingress, egress, passage or access to and from the Site by pedestrian or vehicular traffic; b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and c) other purposes and uses necessary or desirable for access to and from the Site for the repair,

operation and maintenance of the Facility (collectively the "Easements"). The grant of the Easements shall be memorialized in that certain Easement Agreement for Grants of Access, Utilities and Repairs (the "Easement Agreement") attached hereto as Exhibit C. The Department and the Board shall have the right to record the Easement Agreement in the Official Records of the Participating County as of the Effective Date or anytime thereafter. The Easements to be granted by the Participating County are subject to the limitations set forth in the Easement Agreement. In the event of a conflict or ambiguity, with respect to the terms of the Easements, between this Ground Lease and the Easement Agreement, the terms of the Easement Agreement shall control.

SECTION 5. Landlord Right of Entry for Construction.

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

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

SECTION 6. Purpose and Use.

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

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

SECTION 7. Assignment or Sublease.

The Department may sublet or assign all or a portion of the Site or the Project or assign this Ground Lease or any interest therein, without the prior consent or approval of the Participating County; provided, however, any sublet or assignment shall be subject to the prior approval of the Board. Notwithstanding that the Participating County's consent or approval is not required for any subletting of the Site or the Project, to assist with the Board's financing of the Project, the

Participating County hereby consents to and approves the sublease of the Site, together with the Improvements, to the Board under the Site Lease and the further subletting of the Facility by the Board to the Department under the Facility Lease.

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

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

SECTION 9. Cooperation.

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

SECTION 10. Term and Extension for Abatement Event.

(a) Term and Extension. The term of this Ground Lease shall be fifty (50) years (the "Term"), commencing on the Effective Date and expiring on _____, 20__, except that such Term may be extended in writing by the Parties, or is sooner terminated as hereinafter provided; provided, however, no extension of the Term or termination of this Ground Lease may occur without the prior approval of the Board; and provided further, no termination of this Ground Lease may occur until all of the Bonds have been paid or retired under the provisions of the Bond Documents.

(b) Abatement Event. If an Abatement Event occurs as defined in the Facility Lease that would prevent the Bonds from being repaid before the expiration of the Term, then the Department shall have the unilateral right, subject to the prior approval of the Board, to extend the Term beyond the fifty (50) year term until all of the Bonds have been paid or retired under the provisions of the Bond Documents, by giving written notice to the Participating County within sixty (60) days of the Abatement Event.

SECTION 11. Rental.

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

SECTION 12. Taxes and Assessment.

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

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

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

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

SECTION 14. Damage or Destruction.

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

SECTION 15. Insurance.

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

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

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

SECTION 17. The Department's Right to Terminate.

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

SECTION 18. The Participating County's Right to Terminate

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

SECTION 19. Non-Termination, Default and Damages.

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

SECTION 20. Waste and Hazardous Materials.

Neither the Participating County nor the Department shall knowingly commit, suffer or permit any waste or nuisance on the Site or any acts to be done thereon in violation of any laws or ordinances. To the Participating County's best knowledge, after having examined its documents, public records and other instruments and having made inquiry of appropriate departments and agencies with respect to the Site and, except as specifically provided in this Ground Lease, no Hazardous Materials, were used, generated, stored, released, discharged or disposed of on, under, in, or about the Site or transported to or from the Site. The Participating County represents with respect to the Site that neither the Participating County nor any other person or entity under the control of, or with the knowledge of the Participating County will cause or permit the use generation, storage, release, discharge, or disposal of any Hazardous 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 there under (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 Government Code Section 15820.905, 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 provided 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 expect 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.

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:

To the Board:

To the Participating County:

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.

(i) 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.

(j) 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.

(k) 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: Legal Opinion Letter
Exhibit E: List of the Permitted Encumbrances
Exhibit F: Pending and Threatened Lawsuits

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: _____
Assistant Administrative Secretary
Name: _____
Title: _____

Consent to the Ground Lease approved at the [Date of Board meeting] State Public Works Board meeting, and this Ground Lease is effective as of this 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 Sections 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 duly adopted on _____ and the Board consents to the recordation thereof by its duly authorized officer.

***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: _____ **Date:** _____
Name: _____
Title: _____

APPROVED

DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA

By: _____ **Date:** _____
Name: _____
Title: _____

APPROVED

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

By: _____ **Date:** _____
Name: _____
Title: _____

EXHIBIT A

(Project Description)

(to be inserted)

EXHIBIT B

(Legal Description of the Site)

(to be inserted)

EXHIBIT C

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

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

_____
_____
_____
_____

NO RECORDING FEES DUE. This Easement Agreement is recorded for the benefit of the State of California and is exempt from recording fees pursuant to Section 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 _____, as grantor (the "Participating County"), and the DEPARTMENT OF CORRECTIONS AND REHABILITATION 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 Property 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 [_____] 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 [_____] 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: _____
Assistant Administrative Secretary
Name: _____
Title: _____

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 Sections 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 duly adopted on _____ and the Board consents to the recordation thereof by its duly authorized officer.

***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: _____ **Date:** _____
Name: _____
Title: _____

APPROVED

DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA

By: _____ **Date:** _____
Name: _____
Title: _____

APPROVED

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

By: _____ **Date:** _____
Name: _____
Title: _____

EXHIBIT 1 TO EASEMENT AGREEMENT

LEGAL DESCRIPTION OF THE SITE

(To Be Attached)

EXHIBIT 2 TO EASEMENT AGREEMENT

EASEMENT PROPERTY

(To Be Attached)

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]

EXHIBIT F

(Pending and Threatened Lawsuits)

(to be inserted)

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Location of Site	RIGHT OF ENTRY FOR CONSTRUCTION AND OPERATION
Agency: Department of Corrections and Rehabilitation of the State of California **Real Property:**	

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 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 _____, as licensee (the "Participating County"). The Department and the Participating County are sometimes individually referred to as "Party" and collectively as "Parties".

RECITALS

WHEREAS, pursuant to Chapter 3.12 of Part 10b of Division 3 of Title 2 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 15820.916 of the California Government Code (the "AB 900 Jail Financing Program"); and

WHEREAS, the Participating County has proposed to build a jail facility, the _____ project (the "Project"), to be located at _____, 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 property.

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 15820.915 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'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 an Indemnitee wherein the claim arises out of the gross 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, the prevailing Party shall be entitled to collect from the other party its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

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 OF _____

By: _____
Name:
Title:

DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA

By: _____
Name: Deborah Hysen
Title: Deputy Director,
Facility Planning, Construction and Management

CONSENT: STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA

By: _____
Name: Stephen Benson
Title: Deputy Director

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

By: _____
Name:
Title:

NOTE: THIS IS A GENERAL FORM OF FACILITY SUBLEASE ONLY. THE STATE PUBLIC WORKS BOARD AND THE STATE'S FINANCING TEAM HAVE FULL RIGHT AND AUTHORITY TO ALTER, CHANGE, AND MODIFY THIS GENERAL FORM AS NECESSARY, UPON ADVICE OF COUNSEL, TO FACILITATE THE FINANCING AS THEY DEEM NECESSARY.

FORM OF FACILITY SUBLEASE

RECORDING REQUESTED BY	)
AND WHEN RECORDED MAIL TO:	)
	)
[ADDRESS]	)
_____	)
_____	)
Attention:	)

[Space above for Recorder's use]

FACILITY SUBLEASE
by and between the

DEPARTMENT OF CORRECTIONS AND REHABILITATION
OF THE STATE OF CALIFORNIA,
as Sublessor

and

County of [COUNTY],
as Sublessee

Dated as of _____ 1, 20__

[PROJECT NAME]
([COUNTY])

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

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SECTION 6. Obligations of Participating County.

(a) Maintenance, Repair, Replacement and Utilities. The Participating County shall, at its own cost and expense, pay for all maintenance and repair, both ordinary and extraordinary, of the Facility. The Participating County shall at all times maintain, or otherwise arrange for the maintenance of, the Facility in good condition, and the Participating County shall pay for, or otherwise arrange for, the payment of all utility services supplied to the Facility, and shall pay for, or otherwise arrange for, the payment of the costs of the repair and replacement of the Facility resulting from ordinary or extraordinary wear and tear or want of care on the part of the Participating County or any other cause (except for a catastrophic uninsured loss), and shall pay for, or otherwise arrange for, the payment of any insurance policies, except those provided by the Department pursuant to the Facility Lease.

(b) Rent. The Department shall pay all Base Rental and Additional Rental as required under the Facility Lease. The Participating County shall pay upon the order of the Department or the Board as rent hereunder such amounts, if any, in each year as shall be required by the Department or Board for the payment of all applicable taxes and assessments of any type or nature assessed or levied by any governmental agency or entity having power to levy taxes or assessments charged to the Department, the Board or the State Treasurer affecting or relating to the Facility or their respective interests or estates therein. Except for the Base Rental and Additional Rental obligations and insurance obligations as specified in the Facility Lease, the Department shall have no duty under this Facility Sublease to pay for any other costs to maintain and operate the Facility. The rent required under this section 6(b) shall be abated proportionately during any period in which the Department's obligation to pay rent under the Facility Lease shall be abated.

The Participating County shall submit to the Department within 15 Business Days of the adoption of the Participating County's Budget each year, a copy of its approved and authorized budget that details the amounts allocated to maintain and operate the Facility, including any reserves. The Participating County shall further submit to the Department by the above referenced date, a copy of the relevant portion of the approved and authorized budgets of each sublessee with respect to the Facility, if any, evidencing the respective sublessee's allocation of funds to maintain and operate its portion of the Facility. On September 1 of each year during the term of this Facility Sublease, the Department shall submit a report to the Board including a summary of the information provided by the Participating County as set forth in this paragraph. This report shall be in a form approved by the Board and shall incorporate any other summary to be provided by the Department pursuant to the terms of any facility sublease entered into by the Department in connection with facilities constructed pursuant to the Law, as applicable.

SECTION 7. Insurance.

(a) Insurance Obligations of the Department. The Department will pay or cause to be paid the cost of all insurance required to be maintained under the Facility Lease. The Participating County will not be required to pay or reimburse the Department or any other State of California agency for these insurance costs or any deductible paid by the State. The

Department will provide, or cause to be provided, proof of insurance coverage to the Participating County.

In the event of (i) damage or destruction of the Facility caused by the perils covered by the insurance required under the Facility Lease and (ii) if the Board elects, under the terms of the Facility Lease and the Indenture, to redeem the outstanding Bonds, and (iii) if any insurance proceeds remain after the Bonds have been redeemed and such remaining proceeds are not needed under the terms of the Indenture, and (iv) such funds are distributed to the Department, then the Department agrees to distribute such funds to the Participating County.

The Department will not insure the Participating County's equipment, stored goods, other personal property, fixtures, or tenant improvements, nor such personal property owned by Participating County's, subtenants or assigns, if any, or invitees. The Department shall not be required to repair any injury or damage to any personal property or trade fixtures installed in the Facility by the Participating County caused by fire or other casualty, or to replace any such personal property or trade fixtures. The Participating County may, at its sole option and expense, obtain physical damage insurance covering their equipment, stored goods, other personal property, fixtures or tenant improvement or obtain business interruption insurance.

The Participating County and its boards, officers, agents and employees shall be named as additional insureds on the above insurance. To the extent permitted by law, the Department and the Participating County agree to release the other and waive their rights of recovery against the other for damage to the Facility or their respective property at the Facility arising from perils insured under any commercial property insurance listed in this Facility Sublease or the Facility Lease. The property insurance policies of the Department and the Participating County shall contain a waiver of subrogation endorsement in favor of the other.

(b) Insurance Obligations of the Participating County. The Participating County, at its own cost and expense, shall secure and maintain or cause to be secured and maintained from an insurance company or companies approved to do business in the State of California and maintain during the entire term of this Facility Sublease, the following insurance coverage for the Facility:

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

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

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

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

(d) Insurance Certificate. The Participating County shall submit or cause to be submitted to the Department, by no later than June 30th of each year, a certificate of insurance or other evidence of insurance in a form satisfactory to the Department.

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

SECTION 8. Assignment or Subletting of Facility.

(a) The Participating County and the Department hereby covenant and agree that neither this Facility Sublease nor any interest of either party in this Facility Sublease shall be sold, mortgaged, pledged, assigned, or transferred by either party by voluntary act or by operation of law or otherwise; provided, however, under certain circumstances, the Facility may be subleased in whole or in part by the Participating County. The Participating County shall not sublet or assign any portion of the Facility, or permit its subtenants to sublet or assign portions of the Facility, without obtaining the prior written consent and approval of the Department and the Board to the form and substance of such sublease, the sublessee and, provided further that, any such sublease shall be subject to the following conditions:

(1) Any sublease of the Facility by the Participating County shall explicitly provide that such sublease is subject to all rights of the Department and the Board under the Facility Sublease, including, the right to re-enter and re-let the Facility or terminate such lease upon a default by the Participating County; and

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

(b) The Participating County acknowledges that if the Department breaches the terms of the Facility Lease a remedy for such breach available to the Board under the Facility Lease is to enter and re-let the Facility to an entity other than the Department. If the Board, at its discretion, chooses to exercise this remedy, the Board agrees its first offer to relet the Facility, the terms of such offer to be at the sole reasonable discretion of the Board, shall be made to the Participating County.

(c) This CDCR Facility Sublease shall not be subordinated.

SECTION 9. Hazardous Materials. The Participating County shall fully disclose in writing to the Department and the Board the existence, extent and nature of any Hazardous Materials, substances, wastes or other environmentally regulated substances, of which the Participating County has actual knowledge relative to the Project. The Participating County further warrants, covenants and represents that it will promptly notify the Department and the Board in writing of any change in the nature or extent of any Hazardous Materials, substances or wastes maintained on, in, under or under the Project or used in connection therewith, of which the Participating County gains actual knowledge, and will transmit to the Agencies and the Trustee copies of any citations, orders, notices or other material governmental or other communication received by the Participating County with respect to any other Hazardous Materials, substances, wastes or other environmentally regulated substances affecting the Project. The Participating County shall ensure (as to itself), and shall use its best efforts to ensure (as to its contractors, consultants and other agents), that all activities of the Participating County or any officers, employees, contractors, consultants, or any other agents of the Participating County performed at the Facility will be in full compliance with all federal, state and local environmental laws, regulations, and ordinances, and further agrees that neither the Participating County nor its contractors, consultants, agents, officers or employees will engage in any management of solid or hazardous wastes at the Project in violation of any Environmental Law. If the presence of Hazardous Materials on the Project results in the contamination or deterioration of the Project or any water or soil beneath the Project, the Participating County shall promptly take all action necessary to investigate and remedy that contamination.

The Participating County shall defend, indemnify and hold the Department and the Board harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean up costs), judgments and expenses (including attorneys', consultants', or experts' fees and expenses of every kind and nature) suffered by or asserted against the Department or the Board as a direct or indirect result of any warranty or representation made by the Participating County in the preceding paragraph being false or untrue in any material respect or the breach of any obligation of the Participating County in the preceding paragraph. The indemnification obligations set forth in this paragraph shall survive any termination of this Facility Sublease.

"Hazardous Materials" means any substance, material, or waste which is or becomes, prior to the date of execution and delivery hereof, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous substance", "hazardous material", "toxic substance", "solid waste", "pollutant or contaminant", "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under the Comprehensive Environmental

Response, Compensation and Liability Act of 1980 ("CERCLA") [42 U.S.C.A §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 U.S.C.A §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 U.S.C.A §§ 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 U.S.C.A §§ 2601 et seq.]; the Federal Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A §§ 9601 et seq.]; the Clean Air Act [42 U.S.C.A §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act [42 U.S.C.A §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health & Saf. Code §§ 25280 et seq.]; the California Hazardous Substances Account Act [Health & Saf. Code §§ 25300 et seq.]; the California Hazardous Waste Control Act [Health & Saf. Code §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health & Saf. Code §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Act [Wat. Code §§ 13000 et seq.], including without limitation, Sections 25115, 25117 or 25122.7 of the California Health and Safety Code, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Talmer Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code.

"Environmental Laws" means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to Hazardous Materials to which the Participating County or the Facility is subject, including all those laws referenced above in the definition of Hazardous Materials.

SECTION 10. Termination, Breach, Default and Damages.

(a) This Facility Sublease shall terminate upon the occurrence of the expiration of the lease term as set forth in Section 3.

(b) If the Participating County shall fail to keep, observe or perform any term, covenant or condition contained herein to be kept or performed by the Participating County for a period of sixty (60) days after notice of the same has been given to the Participating County by the Department or the Board or for such additional time as is reasonably required, in the sole discretion of the Department, with the consent of the Board, to correct any of the same, the Participating County shall be deemed to be in default hereunder and it shall be lawful for the Department to exercise any and all remedies available pursuant to law or granted pursuant to this Facility Sublease. Upon any such default, the Department, in addition to all other rights and remedies it may have at law, shall, with the consent of the Board, have the option to do any of the following:

(1) To terminate this Facility Sublease in the manner hereinafter provided on account of default by the Participating County, notwithstanding any re-entry or re-letting of the Facility as hereinafter provided

for in subparagraph (2) hereof, and to re-enter the Facility and remove all persons in possession thereof and all personal property whatsoever situated upon the Facility and place such personal property in storage in any warehouse or other suitable place. In the event of such termination, the Participating County agrees to immediately surrender possession of the Facility, without let or hindrance, and to pay the Department and the Board all damages recoverable at law that the Department may incur by reason of default by the Participating County, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Facility and removal and storage of such property by the Department or its duly authorized agents in accordance with the provisions herein contained. Neither notice to deliver up possession of the Facility given pursuant to law nor any entry or re-entry by the Department nor any proceeding in unlawful detainer, or otherwise, brought by the Department for the purpose of effecting such re-entry or obtaining possession of the Facility, nor the appointment of a receiver upon initiative of the Department to protect the Board's interest under the Facility Lease shall of itself operate to terminate this Facility Sublease, and no termination of this Facility Sublease on account of default by the Participating County shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Department shall have given written notice to the Participating County of the election on the part of the Department to terminate this Facility Sublease. The Participating County covenants and agrees that no surrender of the Facility or of the remainder of the term hereof or any termination of this Facility Sublease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Department by such written notice.

(2) Without terminating this lease, (i) to enforce any term or provision to be kept or performed by the Participating County or (ii) to exercise any and all rights of entry and re-entry upon the Facility. In the event the Department does not elect to terminate this Facility Sublease in the manner provided for in subparagraph (1) hereof, the Participating County shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the Participating County, and notwithstanding any entry or re-entry by the Department or suit in unlawful detainer, or otherwise, brought by the Department for the purpose of effecting a re-entry or obtaining possession of the Facility. Should the Department elect to re-enter as herein provided, the Participating County hereby irrevocably appoints the Department as the agent and attorney-in-fact of the Participating County to re-let the Facility, or any part thereof, from time to time, either in the Department's name or otherwise, upon such terms and conditions and for such use and period as the Department may deem advisable and to remove all persons in possession thereof and all personal property whatsoever situated upon the Facility and to place such personal property in storage in any warehouse or other suitable place, for the account of and at the expense of the Participating County, and the Participating County hereby exempts and agrees to save harmless the Department from any costs, loss or damage whatsoever arising out of, in connection with, or incident to

any such re-entry upon and re-letting of the Facility and removal and storage of such property by the Department or its duly authorized agents in accordance with the provisions herein contained except for any such costs, loss or damage resulting from the intentional or negligent actions of the Department or its agents. The Participating County agrees that the terms of this Facility Sublease constitute full and sufficient notice of the right of the Department to re-let the Facility in the event of such re-entry without effecting a surrender of this Facility Sublease. The Participating County further agrees that no acts of the Department in effecting such re-letting shall constitute a surrender or termination of this Facility Sublease irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the Participating County the right to terminate this Facility Sublease shall vest in the Department to be effected in the sole and exclusive manner provided for in subparagraph (1) hereof. The Participating County further agrees to pay the Department the cost of any alterations or additions to the Facility necessary to place the Facility in condition for re-letting immediately upon notice to the Participating County of the completion and installation of such additions or alterations.

(c) This Facility Sublease may be terminated at the option of the Board if the Board determines to exercise its right to enter and re-let the Facility under the Facility Lease pursuant to a default by the Department thereunder.

(d) In addition to any default resulting from breach by the Participating County of any term or covenant of this Facility Sublease, if (1) the Participating County's interest in this Facility Sublease or any part thereof be assigned, sublet or transferred without the prior written consent to the Department and the Board, either voluntarily or by operation of law, or (2) the Participating County or any assignee shall file any petition or institute any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the Participating County asks or seeks or prays to be adjudicated as bankrupt, or is to be discharged from any or all of the Participating County's debts or obligations, or offers to the Participating County's creditors to effect a composition or extension of time to pay the Participating County's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of the Participating County's debts or for any other similar relief, or if any such petition or if any such proceedings of the same or similar kind or character be filed or be instituted or taken against the Participating County, or if a receiver of the business or of the property or assets of the Participating County shall be appointed by any court, except a receiver appointed at the insistence or request of the Department or the Board, or if the Participating County shall make a general or any assignment for the benefit of the Participating County's creditors, or (3) the Participating County shall abandon the Facility, then the Participating County shall be deemed to be in default hereunder.

(e) The Department shall in no event be in default in the performance of any of its obligations hereunder unless and until the Department shall have failed to perform such obligations within sixty (60) days or such additional time as is reasonably required to correct any such default after notice by the Participating County to the Department that the Department has failed to perform any such obligation.

(f) The Participating County hereby waives any and all claims for damages caused or which may be caused by the Department in re-entering and taking possession of the Facility as herein provided and all claims for damages that may result from the destruction of or injury to the Facility and all claims for damages to or loss of any property belonging to the Department, or any other person, that may be in or upon the Facility, except for such claims resulting from the intentional or negligent actions of the Department or its agents.

Each and all of the remedies given to the Department hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Department to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation or other utilization by the Department of the Facility. If any statute or rule of law validly shall limit the remedies given to the Department hereunder, the Department nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the Department shall prevail in any action brought to enforce any of the terms and provisions of this Facility Sublease, the Participating County agrees to pay reasonable attorney's fees incurred by the Department in attempting to enforce any of the remedies available to the Department hereunder; whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

SECTION 11. Additions, Betterments, Extensions or Improvements; Liens. If any proposed additions, betterments, extensions or improvements of the Facility require approval by the Corrections Standards Authority, the Participating County shall concurrently with the request for such approval(s) request the approval to such additions, betterments, extensions or improvements of the Board. The Participating County acknowledges the commencement of such additions, betterments, extensions or improvements shall be subject to receipt by the Participating County of the Board's approval thereto. In the event the Participating County shall at any time during the term of this Facility Sublease cause any additions, betterments, extensions or improvements to the Facility to be acquired or constructed or materials to be supplied in or upon the Facility, the Participating County shall pay or cause to be paid when due all sums of money that may become due, or purporting to be due for any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the Participating County in, upon or about the Facility and shall keep the Facility free of any and all mechanics' or materialmen's liens or other liens against the Facility or the Department's or the Board's interest therein. In the event any such lien attaches to or is filed against the Facility or the Department's or the Board's interest therein, the Participating County shall 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 becomes due, except that if the Participating County desires to contest any such lien it

may do so. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the Participating County shall forthwith pay or cause to be paid and discharged such judgment. In accordance with Section 20, the Participating County agrees to and shall, to the maximum extent permitted by law, defend, indemnify and hold the Department, the Board, the State Treasurer and their members, directors, agents, successors and assigns harmless from and against and defend each of them against any claim, demand, loss, damage, liability or expense (including attorneys' fees) as a result of any such lien or claim of lien against the Facility or the Department's or the Board's interest therein. The Participating County hereby acknowledges and agrees that it shall not cause any additions, betterments, extensions or improvements to the Facility to occur in such a manner that Rental under the Facility Lease would be abated.

The Department covenants that the Project is not and will not be mortgaged, pledged, or hypothecated by the Department in any manner or for any purpose and that the Project has not been and will not be the subject of a security interest by the Department. In addition, the Department covenants that the Project is not and will not be mortgaged, pledged, or hypothecated for the benefit of the Particpating County or its creditors in any manner or for any purpose and that the Project has not been and will not be the subject of a grant of a security interest in favor of the Participating County or its creditors. The Department 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 12. Continuing Disclosure. The Participating County hereby covenants and agrees that it will fully cooperate with the Department, the Board and the State Treasurer so that they can comply with and carry out all of the provisions of the Continuing Disclosure Agreement and will provide all information reasonably requested by the Department, the Board or the State Treasurer regarding the Facility, in connection with continuing disclosure obligations.

SECTION 13. Status of Private Activity Use of the Facility. The Participating County hereby covenants and agrees to provide information to the Department, the Board and the State Treasurer annually regarding the private activity use, if any, of the Facility. Any such private use must be consistent with the Participating County's covenants pursuant to Section 14 hereof. The information that must be updated annually is set forth in the Tax Certificate that was executed and delivered by the Board upon the initial issuance of the Bonds.

SECTION 14. Tax Covenants. The Participating County covenants that it will not use or permit any use of the Facility, and shall not take or permit to be taken any other action or actions, which would cause any Bond to be a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended; and any applicable regulations promulgated from time to time thereunder. The Participating County further covenants that it will not take any action or fail to take any action, if such action or the failure to take such action would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

The Participating County does not expect to and shall not perform any act, enter into any agreement, or use or permit more than 10% of the Bond proceeds or the Project to be used in any trade or business unrelated to the exempt purposes of the Participating County (as defined in Section 513(a) of the Code), or enter into any contract or arrangement with any person or organization (other than a state or local governmental unit, or a 501(c)(3) organization acting within the scope of its exempt purposes), including the federal government (a "Disqualified Person"), which provides for use of more than 10% of the Project in any trade or business of such Disqualified Person ("Private Use"), including a lease or sale of any part of the Project excluding general public use and other uses disregarded under Treasury Regulation §1.141-3, unless the Participating County provides prior written notice to the Board of the proposed act, agreement or use and the Participating County and the Issuer receive an opinion of nationally recognized bond counsel acceptable to the Board with respect to such act, agreement or use.

The Participating County will not enter into any arrangement with any Disqualified Person which provides for such person to manage, operate, or provide services with respect to the Project (or any portion thereof) (a "Service Contract"), unless the guidelines set forth in Revenue Procedure 97-13, as modified by Revenue Procedure 2001-39 (the "Guidelines"), are satisfied, except to the extent the Participating County obtains a private letter ruling from the Internal Revenue Service or an opinion of nationally recognized bond counsel acceptable to the Board which allows for a variation from the Guidelines.

The Participating County will not enter into any contract or arrangement with any Disqualified Person which provides for use of the Project (or any portion thereof) for "research," within the meaning of Treasury Regulations Section 1.141-3(b)(6), for the benefit of such Disqualified Person unless such contract or arrangement meets the requirements of Rev. Proc. 2007-47. For this purpose, "research" includes activities that represent research in the experimental or laboratory sense. The term generally includes all activities incident to the development or improvement of a product, including obtaining a patent. "Research" for this purpose does not include management studies. However, contracts or arrangements with a Disqualified Person for management studies may result in private trade or business use if the Disqualified Person has possessory or priority rights in specific portions of the Project.

SECTION 15. No Merger. The parties hereto intend that there shall be no merger of any estate or interest created by this Facility Lease with any other estate or interest in the Facility, or any part thereof, by reason of the fact that the same party may acquire or hold all or any part of the estate or interest in the Facility created by this Facility Lease as well as another estate or interest in the Facility.

SECTION 16. Waste. The Participating County shall not commit, suffer, or permit any waste or nuisance on or within the Facility or any acts to be done thereon in violation of any laws or ordinances.

SECTION 17. Amendments. This Facility Sublease may not be amended, changed, modified or altered without the prior written consent of the parties hereto and the Board.

SECTION 18. Waiver.

The waiver by the Department, any such waiver subject to the consent thereto of the Board, of any breach by the Participating County of any agreement, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other agreement, covenant or condition hereof.

The waiver by the Participating County, any such waiver subject to the consent thereto of the Board, of any breach by the Department of any agreement, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other agreement, covenant or condition hereof.

SECTION 19. Non-Liability of the Department and other State Entities. Any obligation of the Department created by or arising out of this Facility Sublease shall not impose a debt or pecuniary liability upon the Department, the Board or the State of California, or a charge upon the general credit or taxing powers thereof, but shall be payable solely out of funds duly authorized and appropriated by the State.

The delivery of this Facility Sublease shall not, directly or indirectly or contingently, obligate the Board, the Department, the State Treasurer or the State of California to levy any form of taxation therefor or to make any appropriation. Nothing herein or in the proceedings of the Participating County, the Board or the Department shall be construed to authorize the creation of a debt of the Board, the Department, the State Treasurer or the State of California, within the meaning of any constitutional or statutory provision of the State of California. No breach of any pledge, obligation or agreement made or incurred in connection herewith may impose any pecuniary liability upon, or any charge upon the general credit of the Board, the Department or the State of California.

SECTION 20. Indemnification.
As required by California Government Code Section 15820.905, the Participating County agrees to indemnify, defend, and hold harmless the State of California, including but not limited to the Department and the Board and their officers, agents and employees, for any and all claims and losses accruing and resulting from or arising out of the Participating County's use and occupancy of the Facility. The Participating County's obligation to indemnify, defend and hold harmless under this Section shall extend to all such claims and losses arising, occurring, alleged, or made at any time, including prior to, during, or after the period that this Facility Sublease is in full force and effect. Notwithstanding the preceding sentence, the Participating County will not be required to indemnify, defend or hold harmless the Department, the Board, or any other State agency, or their respective officers, agents, employees, contractors and/or invitees from any claim which arises, in whole or in part, from the gross negligence or willful misconduct or omission of the Department, the Board, or any other State agency, or their respective officers, agents, employees, contractors and/or invitees. The indemnification obligations of the Participating County set forth in this Section shall survive any termination of this Facility Sublease.

SECTION 21. Law Governing. This Facility Sublease shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exist. Any action or proceeding to enforce or interpret any provision of this lease shall, to the extent permitted by law, be brought, commenced or prosecuted in the courts of the State located in the Participating County of Sacramento, California.

SECTION 22. Headings. All section headings contained in this Facility Sublease are for convenience of reference only and are not intended to define or limit the scope of any provision of this Facility Sublease.

SECTION 23. Notices. All approvals, authorizations, consents, demands, designations, notices, offers, requests, statements or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the Department:	Department of Corrections and Rehabilitation of the State of California Attention: _____ [Address]
To the Board:	State Public Works Board Attn: Administrative Secretary 915 "L" Street, 9th floor Sacramento, CA 95814
To the State Treasurer:	Treasurer of the State of California Public Finance Division 915 Capitol Mall, Room 280 Sacramento, CA 95814
To the Participating County:	[COUNTY] Sheriff [Address] Attention: _____
With a copy to:	[Title of Appropriate County Officer], [Address] Attention: _____

The address to which notices shall be mailed as aforesaid to any party may be changed by written notice given by such party to the others as hereinabove provided.

SECTION 24. 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 hereto.

SECTION 25. Validity and Severability. If for any reason this Facility Sublease or any part thereof shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the Department or by the Participating County, all of the remaining terms of this Facility Sublease shall nonetheless continue in full force and effect. If for any reason it is held by such a court that any of the covenants and conditions of the Participating County hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Facility Sublease is and shall be deemed to be a lease from year to year under which the rentals are to be paid by the Participating County annually in consideration of the right of the Participating County to possess, occupy and use the Facility, and all the other terms, provisions and conditions of this Facility Sublease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect, to the extent permitted by law.

SECTION 26. Execution. This Facility Sublease 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 Facility Sublease. It is also agreed that separate counterparts of this Facility Sublease may separately be executed by the Department, the Participating County and any other signatory hereto, all with the same force and effect as though the same counterpart had been executed by the Department, the Participating County and such other signatory.

SECTION 27. Multiple Originals. This Facility Sublease may be executed in any number of originals, each of which shall be deemed to be an original.

SECTION 28. Net Lease. This Facility Sublease shall be deemed and construed to be a "net lease" and the Participating County hereby agrees that the rentals provided for herein shall be an absolute net return to the Department, free and clear of any expenses, charges or set-offs whatsoever.

IN WITNESS WHEREOF, this Facility Sublease has been executed by the parties hereto as of the ___ day of _____, 20__.

DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA

By _____
[Name]
[Title]

COUNTY OF [COUNTY]

By _____
[Name]
[Title]

APPROVED AS TO FORM:

[NAME]
County Counsel

By _____
[Name]
[Title]

CONSENT AND ACKNOWLEDGEMENT OF THE BOARD PURSUANT TO SECTION 8(b) OF THE FACILITY LEASE:

STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA

By _____
[Name]
[Title]

APPROVED (Pursuant to Government Code section 11005.2):

DEPARTMENT OF GENERAL SERVICES OF THE STATE OF CALIFORNIA

By _____
[Name]
[Title]

EXHIBIT A

LEGAL DESCRIPTION OF SITE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On _____, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

a Notary Public, personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On _____, before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

a Notary Public, personally appeared _____,
Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

OFFICE OF THE MAYOR
SAN FRANCISCO

EDWIN M. LEE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Mayor Edwin M. Lee

RE: Authorization to Submit Grant Application for State Funds for Construction of Adult Local Criminal Justice Facilities

DATE: October 1, 2013

Attached for introduction to the Board of Supervisors is the resolution authorizing the Sheriff's Department to submit a grant application to the Board of State and Community Corrections pursuant to California State Senate Bill 1022 (2012) for a proposed project to replace County Jail #3 and County Jail #4 and to seek funding preference for such application; declaring the availability and adequacy of $8,900,000 in cash contribution funds for the proposed project; and conditionally approving the form and execution of associated grant financing and construction documents.

Please note this item is cosponsored by Supervisor Chiu.

I request that this item be calendared in Budget and Finance Committee on October 9, 2013.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

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cc. Supervisor David Chiu

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