

**Attachment 5**  
**Finding to enter into a Project Stabilization Agreement**

*1.0 The Pilot Project Stabilization Agreement for the Northern Branch Jail AB900 Phase II furthers a legitimate governmental interest consistent with competitive bidding law by preventing costly project delays, assuring contractors access to skilled labor, and avoiding the potential for labor strife during the life of the Project.*

The County of Santa Barbara received an \$80 million conditional award from the State to design and construct a 376-bed adult detention facility near Santa Maria, California in accordance with Phase II of the AB900 Jail Construction Financing Program (the Northern Branch Jail AB900 Phase II or the Project). Agreements between the State and the County for the Northern Branch Jail AB900 Phase II set a Project timeline and date for completion of construction. Consequences for failing to meet the Project schedule, in addition to the normal overrun costs, include the additional risks related to AB900 Phase II funding for this Project. Accordingly, failure to timely construct this Project may:

- Stop further reimbursement, from the State to the County, of any amount remaining in the State's maximum \$80 million conditional award to the County (BSCC Jail Construction Agreement Art. 6.B.3; BSCC Jail Construction Agreement Exhibit A, Art. 8.A.1;) and
- Require the County to refund to the State "all State financing previously disbursed" by the State to the County of that maximum \$80 million conditional award. (BSCC Jail Construction Agreement, Art. 1.C.3.)

Therefore, the Board finds that utilization of a Project Stabilization Agreement prohibiting any work stoppages, strikes, sympathy strikes or lockouts and ensuring contractors a steady and reliable source of skilled labor for the Project, would limit the increased financial risks to the County from a construction schedule overrun. Accordingly, a Project Stabilization Agreement furthers a legitimate government interest consistent with the competitive bidding laws.

- A. **Project Budget.** The current budget for the Northern Branch Jail AB900 Phase II is approximately \$96 million. The Project budget includes the entire conditional award of \$80 million of State fund, the required County match of approximately \$8.9 million, and additional expenses to be funded by the County of approximately \$7.1 million. State funding represents over 80% of the current project budget.
- B. **Project Schedule.** Construction on the Project is anticipated to span over 2 years, commencing in November 2015 with completion in February 2018.

C. **Agreements for AB900 Phase II Funding.** Pursuant to Phase II of the AB900 Jail Construction Financing Program, the State and the County entered into a Project Delivery and Construction Agreement and a Board of State and Community Corrections Jail Construction Agreement. (Approved by the Santa Barbara County Board of Supervisors on May 14, 2013, <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=1423511&GUID=172D07E4-7F0E-44DC-AB0C-5CC1AD6D1659>.)

1. **Project Delivery and Construction Agreement (PDCA).** The PDCA sets the Project scope, cost and schedule, including Project completion by February 2018 and the maximum amount of state reimbursement of \$80 million. (PDCA, Art. 1.2 c, 3.1 a, and Exhibit A.) In addition, the PDCA provides for termination of the agreement by the State based on a series of events including unapproved substantive alterations to the Project scope, cost or schedule. (PDCA, Art. 2.2 a.)
2. **Board of State and Community Corrections (BSCC) Jail Construction Agreement.** The BSCC Jail Construction Agreement includes the following terms:
  - “In the event of termination provided in Article 1(C)(1) [includes County’s breach of material term], and unless the Parties agree in writing otherwise, Participating County shall, upon notification, refund to the BSCC an amount equal to all State Financing previously disbursed to 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.” (BSCC Jail Construction Agreement, Art. 1.C.3 (emphasis added).)
  - “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 provision 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 of Agreement termination by the BSCC.” (BSCC Jail Construction Agreement, Art. 4.I.)
  - “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.” (BSCC Jail Construction Agreement, Art. 6.B.3.)

- “BSCC may withhold all or any portion of State Financing provided for by this Agreement in the event that ... the County has materially and substantially breached the terms and conditions of this Agreement or any other Project Document.” (BSCC Jail Construction Agreement, Exhibit A, Art. 8.A.1.)

D. **California Code of Regulations.** In addition, the California Code of Regulations, title 15, section 1772(c) provides, “Any state reimbursements determined to have been inappropriately or erroneously made, including those resulting from noncompliance as well as overpayments resulting from county plan modifications or other causes, shall, upon written notification, be repaid to the state...” (Emphasis added.)

Based on the agreements between the State and the County and the California Code of Regulations, complying with the Project schedule and timely completing Project construction is an essential component of receiving and retaining the State’s \$80 million of funds for the Project. Failure to timely construct the Project may trigger termination of the agreements with the State, requiring the County to refund \$80 million to the State. The Project Stabilization Agreement would help protect from construction time overruns based on labor unrest or unavailability, thus reducing the County’s financial risks related to the State funding.

