

County of Santa Barbara  
General Services  
**Capital Projects Division**

**PROFESSIONAL SERVICES AGREEMENT**

Between

**THE COUNTY OF SANTA BARBARA**

And

**Liebert & Associates**

For

**PROGRAM PLANNING, ARCHITECTURAL REVIEW, TRANSITION PLANNING  
AND RELATED PROFESSIONAL SERVICES**

For

**Northern Branch Jail- SB1022 STAR Project**

**PROJECT NUMBER: 8747**

**March 24, 2015**

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**PROFESSIONAL SERVICES AGREEMENT**  
**FOR**  
**PROGRAM PLANNING, ARCHITECTURAL REVIEW, TRANSITION**  
**PLANNING AND RELATED PROFESSIONAL SERVICES**  
**ADULT DETENTION FACILITY**

This is an agreement between **THE COUNTY OF SANTA BARBARA** (hereinafter "**Owner**" or "**County**") and **Liebert & Associates** (hereinafter "**Consultant**").

**PART 1 - RECITALS**

- 1.01** WHEREAS, this Professional Services Agreement (hereinafter "PSA") sets forth the terms and conditions pursuant to which Consultant, as a Design Professional, will provide Architectural /Engineering and related professional design services (hereinafter "Services") for the Northern Branch Jail- SB1022 STAR Project (hereinafter "Project").
- 1.02** WHEREAS, Consultant was selected by means of the County's consultant selection process, represents itself as an expert in detention facility planning, having the requisite qualifications, and agrees to perform such Services.
- 1.03** WHEREAS, Consultant will perform such Services pursuant to the scope of work defined in Project Phases, the compensation for which to be negotiated individually and collectively by both parties to this PSA and collectively establishing the full compensation of this PSA, and to be given Notice To Proceed on by Owner's Authorized Representative pursuant to this PSA.

**NOW, THEREFORE, Owner and Consultant agree as follows:**

**PART 2 - PROJECT AUTHORIZATION, TERM AND MAXIMUM COMPENSATION**

**2.01 Agreement For Services.**

- A. This Professional Services Agreement is a master agreement that sets forth the terms and conditions pursuant to which Consultant, as a Professional, will provide the Programming, Planning and Architectural services to the County as it deems necessary to complete Project. This PSA represents a negotiated scope of work and associated compensation for the entire Project. The entire Project is defined by the sum of Project subsets, or work phases called Project Phases, for which partial compensation is identified. The County will authorize Consultant to perform the total Project, one or more phase at a time, by issuing Authorization to proceed with individual Project Phases. Each Project Phase will set forth the Project Phase title to reference the PSA Section defining the scope of services and deliverables for that phase, and the maximum compensation for the phase.

**2.02 Maximum Compensation.**

- A. Compensation for entire Project, which equals the sum of all Project Phases issued pursuant to this PSA, shall not exceed **\$299,550 (Two Hundred Ninety Nine Thousand Five Hundred Fifty Dollars)**. If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit, Consultant does so at

Consultant's sole risk and expense. County shall not be obligated to pay more than the amount set forth in this paragraph except as may be provided in a written amendment signed by both parties.

### **2.03 Term.**

- A. This Agreement is effective upon the date of full execution by both parties, and shall remain in effect for a period of **60 months** ("Term"), unless earlier terminated under [Part 12](#) of this Agreement. All Project Phases shall be executed, but Services not necessarily completed, within the Term of this Agreement.

### **2.04 Scope.**

- A. The Services and Deliverables identified in [Part 5, "Consultant's Responsibilities, Services, And Deliverables"](#), of this PSA, establish the full extent of the Services and Deliverables agreed to between parties, and include the Project Phases identified in [Part 4](#).
- B. Any act or event affecting any particular Project Phase, such as its completion, termination, acceptance, non-acceptance, continuation or modification, shall not affect any other Project Phase or this PSA unless specifically provided herein or agreed in writing by the parties.

## **PART 3 - OWNER'S RESPONSIBILITIES**

### **3.01 Owner Provided Information.**

- A. Owner shall provide the following for Consultant's use in connection with the Services:
  - 1. Senate Bill No. 1022
  - 2. Santa Barbara County Response to California Senate Bill (SB) 1022 Request for Applications, October 17, 2013.
  - 3. California Department of Corrections and Rehabilitation's (CDCR) "Capital Outlay and State Public Works Board (SPWB) Guidelines", March, 2014.
  - 4. Board of State and Community Corrections Title 15 Division 1, Chapter 1, Subchapter 6, "Construction Financing Program".
  - 5. Board of State and Community Corrections SB1022 – Requests for Proposals, Construction of Adult Local Criminal Justice Facilities, July 23, 2013.
  - 6. Owner's Project Manual.
  - 7. Capital Projects Standards.
  - 8. County of Santa Barbara Space Standards.
  - 9. Santa Barbara County Sheriff's Transition and Re-entry (S.T.A.R.) Space Outline, Rosser, September 2013.
  - 10. Owner's Project Requirements (OPR).
  - 11. Final Subsequent Environmental Impact Report (EIR, 07EIR-00000-00003), Rincon Consultants, February 27, 2008.

12. Addendum to EIR (07EIR-00000-00003) dated December 6, 2011.
  13. Addendum to EIR (07EIR-00000-00003) dated September 30, 2013.
  14. A certified survey of the Project site prepared by a California licensed Land Surveyor or Civil Engineer. The survey will include site boundaries, contours, drainage, grades and lines of streets, pavements, and adjoining properties, rights-of-way, easements, encroachments, zoning and other restrictions; information on available public and private utilities services, above and below grade, including inverts and depths.
  15. Professional Service Agreements with other consultants retained for the Project.
  16. Shop drawings, vendor support and all data and power requirements necessary for coordination of movable furniture & equipment unless otherwise provided in this PSA.
  17. Upon request, any information related to the AB900 project deemed necessary, at the County's discretion.
- B. Consultant shall make a written recommendation to the Owner regarding the completeness or sufficiency of any survey or specialized study, as it pertains to Consultant's Services, provided to Consultant, or the need for any study or survey that the Consultant believes is required for the Project that is not included within Consultant's Services.

### **3.02 Approval & Permit Fees.**

- A. Owner will pay all fees required by any law, imposed by jurisdiction having authority over a Project for filing and checking of any item of Service prepared by Consultant, and such fees necessary to secure approvals and permits for the Project from any Governmental Agency.

## **PART 4 - PROJECT PHASES**

### **4.01 Preparation and Approval.**

- A. The Owner's Authorized Representative (OAR) is the Director of General Services Department, or that Director's Designee.
- B. Owner hereby approves all Project Phases executed by OAR within the limits of this PSA. OAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit or scope stated in this PSA.
- C. Commencement of each Project Phase is contingent on receipt by Consultant of an Authorization to Proceed issued by OAR. Consultant shall not commence work until Consultant receives the written Authorization to Proceed from the OAR.
- D. Any act or event affecting any particular Project Phase, such as its completion, termination, acceptance, non-acceptance, continuation or modification, will not affect any other Project Phase or this PSA unless specifically provided herein or agreed in writing by the parties.

### **4.02 Changes in Scope.**

- A. If Owner requests a change in the requirements of a Project Phase that Consultant contends is material and justifies an increase in compensation, Consultant shall within

- fourteen (14) calendar Days of the Owner's request, advise Owner in writing before proceeding with such change. If written notice is not given to Owner within said fourteen (14) Days, such change will be deemed not material and Consultant will not be entitled to additional compensation for the change in the requirements of the Project Phase.
- B. If Owner causes a material change in the Service(s) or Deliverable(s), Consultant shall within fourteen (14) calendar Days of Consultant's discovery of the event that caused the material change, notify Owner in writing that Consultant contends Owner has caused a material change in their Service(s) or Deliverable(s). After said notification, Consultant shall provide such Service or Deliverables as directed by Owner. If Owner concurs that there has been a material change in a Service or Deliverable, payment to Consultant will be adjusted in accordance with [Part 11.01.A.4, "Changes"](#).
  - C. If Consultant discovers a means of achieving a material decrease in the scope of Services required to perform a Project Phase, Consultant shall immediately notify OAR and thereafter accept a reasonable reduction in compensation.

#### **4.03 Project Phases.**

- A. The Project Phases to be completed in this PSA are as follows:
  1. Architectural Programming.
  2. Schematic Design.
  3. Design Development.
  4. Enhanced Design Development
  5. Construction Documents
  6. Bidding.
  7. Construction.
  8. Transition.
  9. Warranty.
- B. The maximum compensation of each of the above listed phases will be negotiated and established as part of this PSA. The sum of these will equal the Maximum Compensation Limit of this PSA.

### **PART 5 - CONSULTANT'S RESPONSIBILITIES, SERVICES, AND DELIVERABLES**

#### **5.01 State of California SB1022 Agreements.**

- A. The Project is primarily funded through a conditional award under State of California State Bill (SB) 1022 lease-revenue bond financing of new detention facilities. Accordingly, to remain eligible for the conditional award, the County of Santa Barbara is obligated to comply with the terms of primarily the following two agreements to be executed by the County of Santa Barbara on and the State of California Public Works Board ("SPWB"), California Department of Corrections and Rehabilitation ("CDCR") and Board of State and Community Corrections ("BSCC"). Consultant's work product and delivery shall comply with the terms and conditions of

the following agreements and their Exhibits and Attachments. These agreements are attached to this PSA as Exhibits and made part of this agreement:

1. Exhibit I: BSCC Jail Construction Agreement (“JCA”), Sample Document Provided.
  2. Exhibit J: CDCR Project Delivery and Construction Agreement (“PDCA”), Sample Document Provided.
- B. Consultant’s responsibilities under the Agreements referred to in [Part 5.01.A](#) include but are not limited to the following:
1. Books and Records. Consultant shall maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to Consultant’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.
  2. Record Maintenance Period. These records shall be maintained for a minimum of three years after the date on which no Project bonds are outstanding (hereinafter “Expiration Date”), estimated to be 2041 if 20-year bonds are issued in 2018. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the Expiration Date, the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the Expiration Date, whichever is later.
  3. Access to Books and Records. Consultant shall make such books, records, supporting documentations, and other evidence available to the BSCC or designees, the CDCR, the State Public Works Board, the State Department of General Services, the State Department of Finance, the Bureau of State Audits, or their designated representatives, during the course of the Project and the Records Maintenance Period and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, Consultant shall include a similar Record Maintenance Period and right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.
  4. Contractor Advisement. By its execution of this Agreement, Consultant acknowledges that a partial source of financing for the agreement between the County and Contractor for construction of the Project is the State Financing, and that the County may not have funds to finance the Agreement for Construction independently of the State Financing. Consultant shall in all ways cooperate with the County and the BSCC in maintaining a good working relationship. Consultant shall cooperate as instructed by the OAR or other County designee in resolving any disputes arising under the Agreement.
  5. Construction Specification Institute (“CSI”) Divisions. To the extent applicable to this Agreement, Consultant shall list construction costs according to CSI Division. CSI Divisions for Project will be set forth in the Schedule of Values to be approved by County.



## 5.02 Scope of Project.

- A. The Project scope is defined as provided in “Exhibit H”, “County of Santa Barbara Project Establishment Package” described as follows:
  - 1. This project will design and construct an expansion of the existing AB 900 county jail on county-owned land. The expansion will include housing, treatment, and program space and provide approximately 228 beds. The project will be dependent on the adjacent AB900 Phase II jail facility for several core operational components including food services, laundry, administration, and maintenance.
  - 2. The housing areas will include double occupancy and multi-occupancy cells, day rooms, exam rooms, a classroom, and program and visitation space. The project will also include outdoor recreation space, centralized program space, a conference room, and staff support and storage space.
  - 3. This project will also include, but is not limited to, electrical; plumbing; mechanical; heating, ventilation, and air conditioning; security; fire protection systems; and parking for staff and visitors. In addition, a portion of the facility will be separated by a fence to provide grounds security.
  - 4. This scope as defined in this [Part 5.02.A](#) may be modified only if the BSCC and CDCR give Owner written approval, and OAR gives subsequent direction to Consultant in writing.
- B. The project scope as outlined in Santa Barbara County Response to California Senate Bill (SB) 1022 Request for Applications, October 17, 2013:
  - 1. This project will design and construct approximately 52,000 gross square feet of housing, treatment, programming and reentry space on approximately 6± acres of the greater 50± acres of county owned land. The project will include one new building constructed primarily of steel and concrete for long-term durability. The building will provide housing for transitional, step-down and reentry, and will have co-located resources from the adjacent jail. The housing space will include approximately 228 beds designated for treatment, programming and transitional housing and will contain day rooms, classroom, vocational training space and visitation space. Services provided by the adjacent jail facility include foodservice, laundry, administration, and maintenance. The treatment and programming space will provide areas for larger groups to assemble and includes a training kitchen, conference room and storage. The program areas will provide opportunities beyond those available in the housing units and space for interaction and involvement with the community. The reentry space will provide office space for staff including a conference room, locker room and supply storage.

## 5.03 Construction Delivery Method.

- A. The delivery method will be design-bid-build (DBB).
- B. Owner has elected to have construction management services be performed by a Construction Manager to be engaged by the Owner concurrently with the selection of Consultant Architect-Engineer firm (hereinafter “Architect”).

## 5.04 Consultant as Independent Contractor.

- A. Consultant is performing all Services as an independent contractor and not an agent or employee of County. The expertise and experience of Consultant are material considerations for County's execution of this PSA. Consultant shall not assign or transfer any interest in this PSA nor the performance of any of Consultant's obligations hereunder, without the prior written consent of Owner, and any attempt to so assign this PSA, or any rights, duties or obligations arising hereunder, shall be void and of no effect.

#### **5.05 Consultant's Use of Subconsultants.**

- A. Consultant and Owner agree that Consultant's unique talents, knowledge and experience form a basis for this PSA and that the services to be performed by Consultant under this PSA are unique in character to Consultant. Therefore, Consultant shall not subcontract, assign or delegate any portion of this PSA or any duties or obligations hereunder unless approved by Owner in a written instrument executed and approved by the Owner in writing. Neither party shall, on the basis of this PSA, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph shall confer no rights on any party and shall be null and void.
- B. Consultant shall use the Subconsultants identified in this PSA, Exhibit B, and shall not substitute Subconsultants unless approved by written instrument executed and approved by the Owner in writing.
- C. To the extent Consultant is permitted by Owner in writing to subcontract, assign or subcontract any portion of this PSA or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code, Section 3321). Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged it the acts and omissions directly.

#### **5.06 Criteria Governing Consultant's Services on Project**

- A. The Project shall be developed and designed in conformance with the following:
  - 1. Needs Assessment Study ("Needs Assessment Study") as included in the SB1022 proposal.
  - 2. JCA previously defined; a copy of which has been provided to Consultant.
  - 3. PDCA previously defined; a copy of which has been provided to Consultant.
  - 4. Exhibit "H", "County of Santa Barbara Project Establishment Package".
- B. Compliance with Laws: Consultant shall comply with the standard of care applicable to similarly credentialed professionals in design of adult detention facilities, regarding complying with all requirements of all applicable laws as if set forth in this PSA, including without limitation California Codes of Regulations (CCR) Titles 8, 14, 15, 19, 22 and 24, and shall include the following:
  - 1. Coordinate fully with BSCC, CDCR, SPWB, the State Fire Marshal and any other authority with jurisdiction, to secure timely review and approval of Consultant's work including.

2. Coordinate and cooperate fully with applicable State agencies in its required observation of construction.
  3. Performing general observation of the work of construction.
- C. State Communications: Assist with necessary approvals from applicable State agencies.
- D. The Project shall be developed and designed in close cooperation with the County's General Services and Sheriff's Offices and their consultants. Consultant acknowledges its obligation to work with, coordinate with, interface with, exchange ideas and design materials with, and otherwise cooperate and collaborate with the General Services and Sheriff's Offices, their independent consultants, including personnel required for transition planning for Project facility, and operational matters throughout development and design of the Project.
- E. During the pre-construction phase, Consultant shall collaborate with Architect-Engineer hired by the County on functional program, design and transition planning, with Commissioning Agent hired by the County to oversee all building commissioning, and with the Construction Manager consultant hired by the County on the design, constructability, cost, schedule and construction of the Project.

### **5.07 Consultant's General Responsibilities.**

The following General Responsibilities shall apply to all Services under this PSA.

- A. Standard of Care.
1. Consultant shall perform Services of each Project Phase in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.
  2. Consultant shall perform Services under this PSA in accordance the terms of the JCA and PDCA agreements.
  3. Consultant shall perform Services under this PSA in compliance with applicable and most stringent written federal, state and local codes, statutes, laws, regulations and ordinances in force at the time a Project Phase is awarded.
  4. Consultant shall use its professional judgment and expertise to verify correct applications of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project.
- B. Sequence of Consultant's Services.
1. In general, Consultant's Services will proceed sequentially by the Phases described in [Part 5.10, "Basic Services & Deliverables"](#).
  2. At the commencement of each phase, Consultant shall submit a detailed schedule for the OPM's review and approval as required under [Part 6.02](#), which must include the Project Establishment milestones as well as the current and all future phases identified in this PSA, and report any variances and a plan for accelerating the schedule to maintain the State milestones.

3. In the event of delays to the overall schedule, the Consultant shall communicate to the OPM variances which cannot be accommodated without impacts to the overall schedule, and will assist the OPM in providing all backup required for State review and approval.
  4. Each Project Phase will establish the Consultant's Milestone Schedule, including any additional interim milestones, for completion of the Consultant's Services applicable to that Project Phase.
  5. Commencement of each Project Phase is contingent on receipt by Consultant of an Authorization to Proceed issued by OAR. Consultant shall not commence work until Consultant receives the written Authorization to Proceed from the OAR.
- C. Signing and Stamping Documents.
1. Original ink signed documents shall be provided in the quantity required by the OAR for each Project Phase.
- D. Submittal of Deliverables.
1. Each submittal shall include a declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its Subconsultants was coordinated, the submittal is complete, and that all prior review comments have been incorporated and coordinated.
  2. For work products developed by Consultant, and that will not be incorporated into documents prepared and submitted by others, Consultant shall furnish to Owner, suitable for reproduction, original Instruments of Service, and computer disks containing Instruments of Service in the following electronic formats: Microsoft PC compatible operating system, Microsoft Office 2010 or newer.
  3. Consultant's 100% submittals for each phase will generally undergo the following process, accept as otherwise approved by the OAR in writing.
    - a. Consultant submits deliverables to Owner and Owner's other consultants electronically using the DMS (see [Part 5.07.H](#)).
    - (1) Consultant submits its Statement of Probable Construction Cost one week later than the rest of the deliverables.
    - b. Owner and Owner's consultants and agents will review and generate comments.
    - c. The OAR will review comments; either accepting or rejecting.
    - d. Consultant incorporates review comments accepted by OAR, and submits back-check versions of each submittal revised.
    - e. Owner and Owner's consultants and agents reviews back-check submittal and provides comments to be incorporated by Consultant for Consultant's submittal to State agencies.
    - f. As directed by OAR, Consultant submits deliverables to State agencies.
    - g. State agencies review submittal and provide comments to either be, at the direction of the OAR:

- (1) Incorporated by Consultant and resubmitted to State agencies.
- (2) Incorporated by Consultant in the next phase (except as provided for 100% Construction Documents phase).

E. Printing & Reproduction.

1. Consultant shall pay for all printing and reproduction cost incurred in the performance of its Services.
2. Owner will print coordination check documents to be used by the Owner at Owner's expense.
3. Owner will print Bid Documents for distribution to Bidders at Owner's expense.
4. At Owner's written request, Consultant shall print or reproduce selected documents. The Consultant may invoice the Owner for Owner-requested printing as a Reimbursable direct expense.

F. Meetings.

1. "Meetings" include workshops and site-visits.
2. In addition to meetings specifically identified in [Part 5.10, "Basic Services & Deliverables"](#), for each Project Phase, Consultant shall attend meetings as needed or required with the organizations or individuals listed as follows:
  - a. Owner's officials, staff, commissions and user groups as required for the performance of Consultant's Services pursuant to this PSA. This requirement includes meetings with Owner, applicable State agencies and user groups to develop, explain and refine Architectural Program and design criteria and for Consultant to present design solutions for acceptance. This also includes a pre-design kickoff meeting with the Owner's organization.
  - b. Owner-sponsored advisory groups and local officials to present the Project to the public.
  - c. Governmental Agencies having jurisdiction related to the Project or any part of the Project. The Consultant shall schedule and participate in preliminary meetings with all Governmental Agencies having jurisdiction for the Project prior to the start of the Schematic Design Phase and as needed or required thereafter.
3. Unless otherwise requested by the OAR, Consultant shall prepare agendas for and take minutes of all meetings conducted by Consultant. Minutes shall be distributed by Consultant, and posted on DMS (defined below) by consultant, to participants not later than 2 business days before meeting, and minutes shall be distributed not later than 5 business days after meeting.
4. The Consultant's fee for attendance at and preparation of minutes for all meetings specifically identified in [Part 5.10, "Basic Services & Deliverables,"](#) will be considered included in the overall fee identified in each Project Phase. For other meetings Owner may request Consultant to attend, Consultant will be compensated as set forth in [Part 11.03, "Additional Services"](#).

5. On-Site Meetings: All meetings which Consultant is required to attend shall be in Santa Barbara County, unless otherwise agreed by the OAR, and include Dennis Liebert only, unless specified in [Part 5.10](#) that “Kevin Warwick” is to attend also. These “On-Site Meetings” shall be considered to have a duration not exceeding one business day, unless otherwise specified in a Project Phase.
  6. Meetings which Consultant attends remotely and which are less than one hour in length and do not occur more than twice per week shall be considered part of Consultant’s Basic Services.
  7. For meetings Consultant attends remotely, which are one hour or more in length or occur more than twice per week, and which are not specified in [Part 5.10, “Basic Services and Deliverable”](#), Consultant shall be compensated as set forth in [Part 11.03, “Additional Services”](#) for number of Consultant’s staff and Subconsultant’s approved by the OAR in advance of the meeting.
  8. For meetings Consultant attends for Project Phases that are compensated by actual time and materials, Consultant will be reimbursed in accordance with the unit rates established in the Project Phase.
  9. Owner's Authorized Representative will coordinate all meetings between Consultant, Owner's user groups, and the public.
- G. Consultant’s Staff and Subconsultants.
1. Consultant's staff and Subconsultants are identified in [Exhibit B](#), “Consultant’s Staff and Subconsultants” and are subject to the requirements set forth therein.
  2. Changes to Consultant’s staff and Subconsultants are subject to written approval as an amendment to the PSA.
- H. Document Management System: Owner will adopt and utilize an electronic, web-based document management and distribution system (“DMS”) selected by Owner for this Project. The acquisition cost and usage cost of the system are not Consultant’s responsibility. Consultant’s fee for all phases of work in this PSA, however, shall include Consultant’s time, and any needed training of Consultant’s staff, to be able to utilize said system in the manner necessary for Consultant to fully participate with Owner’s and Construction Manager’s use of the system. Consultant shall be responsible for maintaining the part of the system which Consultant populates. Consultant shall post work products on DMS within one day of product completion.
- I. Local Labor: Consultant shall recognize it is the Owner’s intent to maximize use of local labor in the construction of the Project. Consultant’s deliverables in all work phases, where applicable, shall provide Owner with alternatives that provide opportunity to increase use of local labor, for Owner’s consideration. Items for discussion shall include, but not be limited to:
1. Design approaches which maximize local production capability, skills, available materials and resources.
  2. Assembly and installation options to maximize local labor.
  3. Communication with local vendors and contractors to ensure proposed approaches are feasible and can be readily employed.

4. Identification of options and cost impacts which can be weighed to further maximize local labor, local vendor inclusion.
- J. Energy Efficiency.
1. Consultant recognizes that the Owner endeavors to utilize state of the art system designs and equipment selections to minimize overall consumption of energy by the Project, and will assist the Owner's Consultants in facilitating energy efficient designs, and the requirements of the Owners's Project Manual (OPR) to the extent to which Consultant's scope is able to contribute towards that goal.
  2. Consultant shall assist in identifying alternate features.

#### **5.08 Coordination of Work with Owner's Other Consultants.**

- A. For the Project, Owner will utilize and establish professional service agreements with several firms, including the Architect Engineer, the Construction Manager/Commissioning Agent. If the provisions of one of Owner's professional service agreements indicate the same service is to be performed by more than one consulting firm, Consultant (of this PSA) shall be responsible for the service, unless otherwise approved in writing by the OAR, and Consultant shall notify the OAR of any duplication or conflict immediately.
- B. Consultant consents to Owner's retaining of an Architect-Engineer, Construction Manager /Commissioning Agent who may perform some or all of the functions assigned to the OAR in this PSA, as delegated by OAR.

#### **5.09 Overview of Water Supply and Waste Water Requirements.**

- A. Water Supply Development: The point of connection for water shall be extended from the AB900 Jail project, from Golden State Water (potable) and Laguna County Sanitation District (recycled water) facilities to the south of the Project site along Black Rd. For purposes of developing a fee for this PSA, Consultant shall assume the Point of Connection POC extension will be designed and constructed by the AB900 project prior to commencing construction of the SB1022 project. Pursuant to [Part 5.10.B](#) of this PSA, Consultant will be tasked with assisting the Owner with develop[ping a cost sharing plan to apportion a percentage of the water infrastructure to the SB1022 project, and to attain State concurrence with the sharing plan to allow eligible County match to apply accordingly to each project. The scope of this PSA covers all design work required to develop the needed water supply for the Project assuming it will be served by infrastructure already in place under the AB900 project.
- B. Waste Water: The tie into sewer infrastructure shall be accomplished under the AB900 Jail project, which will extend service from Laguna County Sanitation District facilities to the south of the Project site along Black Rd. Consultant shall assume the force main will be designed and constructed under the AB900 project and will allow the SB1022 project to be served from that same infrastructure.

#### **5.10 Basic Services & Deliverables.**

- A. Unless the requirements for the Services and Deliverables described herein are specifically modified in writing in a particular Project Phase, when a particular phase of Services is specified and authorized in an individual Project Phase, Consultant

shall provide its Services and Deliverables for that phase in conformance with the requirements described in this [Part 5.10](#).

**B. Programming Phase.**

1. Period of Service: Consultant shall perform to completion all services called for in the Programming Phase within the period of time set forth in [Part 6.01.B](#), beginning at the time of Owner's issuance of authorization to proceed.
2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Project Kick-Off, 2 hours, followed by Function Programming Team meeting # 1, 2 days onsite.
  - b. Tour Transition Facilities in Colorado – 1 day
  - c. Functional Program Workshop # 2 & 3 - 2 days each onsite. Workshop # 2 & 3 will include Kevin Warwick, an inmate programming expert, (sub-consultant to Liebert & Associates) to help develop spaces for inmate programs within the jail and in transitional housing. Mr. Warwick will also spend two days working with the Inmate Program Committee and Sheriff's staff developing and recommending specific inmate programs, curricula and schedules and re-entry planning. Mr. Warwick will provide verbiage for the inmate Programs section of the Functional Program regarding any program information developed and its impact on the design of inmate program spaces, including number of spaces, sizes, special equipment, furnishings and electrical requirements, etc. .
3. Functional Program and Staffing Plan: Review the Architectural Program (Space List) prepared by Rosser in September, 2013 for this Project, and from it and other reviews, develop a Functional Program representing the Owner's operations plan. Consultant shall participate in the meetings required to develop the Functional Program, and shall assist Owner in establishment of the staffing plan. Consultant shall deliver Consultant's work products to the Owner's Architect who will be responsible for incorporating it into the Architectural Program and updating the Space List. Consultant's goal, like Owner's and Architect's goal, shall be to design a facility that meets the SB1022 -defined scope of work, yet minimizes staffing and other operational costs.
4. As part of a team with County staff and Consultants, Consultant's review of the existing Architectural Program (Space List) shall determine if it is current and functional, if it is a good "road map" for design of the new facility or not, and shall provide recommendations on the following:
  - a. Operational philosophy.
  - b. Functional area operational scenarios.
  - c. Space (square footage) needs.
  - d. Space adjacencies.



- e. Preliminary staffing requirements.
  - f. Projected operational budget.
  - g. Design concepts.
5. In the Functional Program Workshops, Consultant shall lead discussions about each operational component of the SB1022 jail as well as its interface with the AB900 Northern Branch Jail Project.
  6. Consultant shall work with the Architect Engineer and Construction Manager to update the Functional and Space Program and work with the Architect Engineer in development of the final space program. Consultant shall write the operational scenarios. The Architect Engineer will participate in the meetings and develop the space adjacency diagrams and the space program. The Architect Engineer will produce the final Functional and Space Program document, including Consultant's operational scenarios.
  7. Other tasks in this phase include:
    - a. Review program milestones.
    - b. Review programmatic areas as compared to standards and codes as well as industry standards.
    - c. Attend and participate remotely in all preliminary design concepts, scheduling and cost meetings.
    - d. Review and issue comments on all design concepts, preliminary scheduling and cost documents.
    - e. Review draft documents, schedules, and plans generated by the Inmate Programs Committee and Sheriff staff for SB1022. Make recommendations for enhancements.
  8. To a level of 25% complete, Consultant shall review and provide input to Architect's development of an Integrated Security Plan (ISP) report in coordination with the Owner, that will include:
    - a. Intent and scope.
    - b. Security operational narratives by equipment type, department, inmate services and staff functions.
    - c. Workstations.
  9. Review and provide input to Architect's development of a Draft Conceptual Master Site Plan for the SB1022 Facility, which will consider State Accessibility requirements and other general building codes, showing;
    - a. Likely limits of facilities needed.
    - b. Acreage assigned to the various facilities, and where on site to best locate them.
    - c. Opportunities and constraints.
    - d. Massing.
    - e. Expandability.

- f. Parking.
- g. Construction feasibility and phasing.
- h. Access for construction.
- i. Location of water, sewer and storm water facilities.

10. Deliverables:

- a. Functional Program and revised Space List (developed by Rosser), to be delivered to Owner and Architect Engineer.
- b. Written input to the ISP, to be delivered to Owner and Architect.

**C. Schematic Design Phase.**

1. Period of Service: After acceptance by Owner of the required deliverables in the Programming Phase, Consultant shall perform to completion all services called for in the Schematic Design Phase within the period of time set forth in [Part 6.01.B](#), beginning at the time of Owner's issuance of authorization to proceed.
2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Design Review Workshop #1 at 30% complete, 2 days onsite.
  - b. Design Review Workshop #2 at 60%, 2 days, with Kevin Warwick. Mr. Warwick will also spend one day working with the Inmate Program Committee and Sheriff staff developing a comprehensive inmate program design and schedules for specific inmate programs, and how they would coordinate or effect already existing inmate programs.
  - c. 100% Draft Submittal Review Comments Workshop #3, 2 days onsite.
3. Consultant's services' during this phase includes work closely with the design team to help bring the best design concepts to the Owner's consideration.
4. Based on the Owner-accepted final Architectural Program, perform Schematic Design Phase services and provide specific deliverables, as described below:
  - a. Schematic Design Reviews. Consultant shall attend schematic design meetings and review Architect's submittals. The proposed designs for each functional area of the jail shall be evaluated to determine if they meet the requirements of the Functional and Architectural Programs, and an evaluation of their operational efficiencies shall be provided in a Schematic Design Phase Review report. The report shall include Consultant's suggestions on modifications or alternative designs that might be more cost efficient, from a construction and operations perspective, yet consistent with the Program.
  - b. Staffing Analysis. Consultant shall review and assist Sheriff's Office update the staffing estimates and operational costs from the Program phase. Architect's presented design options shall be evaluated based on the staffing impacts.

- c. Standards Compliance. Consultant shall review the Schematic Design for compliance with California Jail Standards (Title 15 & 24), considering both design and operations requirements.
  - d. Perform detailed design, constructability, schedule and cost reviews.
  - e. To a level of 50% complete, Consultant shall review and provide input to Architect's development of an Integrated Security Plan (ISP) report in coordination with the Owner, that will include:
    - (1) Content submitted in the 25% ISP report.
    - (2) Materials and finishes.
    - (3) Control components.
    - (4) Outline specifications for security items and detention equipment and furnishings.
  - f. Review and provide input on updated documents, schedules, and plans generated by the Inmate Programs Committee and Transition Team.
5. In addition to Consultant's attendance of meetings shown, Consultant shall be available by phone and remote video teleconferencing as required, to clarify programmatic information, reviewing draft concepts of every functional area in the jail, assist in resolving conflicts, and review new requirements identified.
6. Deliverables: Consultant shall furnish to Owner for the Schematic Design Phase, the following documents:
- a. Schematic Design Phase Review Report.
  - b. Staffing Analysis Review and Recommendations.
  - c. Written input to the ISP, to be delivered to Owner and Architect.

**D. Design Development Phase.**

- 1. Period of Service: After acceptance by Owner of the required deliverables in the Schematic Design Phase, Consultant shall perform to completion all services called for in the Design Development Phase within the period of time set forth in Part 6.01.B, beginning at the time of Owner's issuance of authorization to proceed.
- 2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Design Review Workshop # 1 at 30% complete, with Kevin Warwick (if needed) - 2 days onsite.
  - b. Design Review Workshop # 2 at 60% complete, 2 days onsite
  - c. 100% Draft Submittal Review Comments Workshop # 3, 2 days onsite , followed by Value Engineering Workshop, 1 day onsite. 100% Draft Submittal Review Comments Workshop, 2 days.
- 3. Based on the Owner-accepted Schematic Design Phase Documents, perform Design Development Phase services and deliverables. Consultant's services in this phase include specialty studies and decisions on construction materials,

hardware and various detention systems. Specific services of Consultant include:

- a. Review of design development documents at several stages and provide comments on their degree of conformance with the program and operational efficiency.
- b. Security Hardware and Systems. Meet with the Owner's design team and present and make recommendations on the various types of security hardware and systems and their operational impact. Included in the discussion will be: locks, doors, glazing, intercoms, cameras, perimeter fences, control rooms, control panels, cell construction and communications systems. Consultant shall evaluate each of these security items considering their long and short-term usage and the potential impact on operations and staffing costs. Assist Owner's Architect in the development of, and provide input into, the Integrated Security Plan (ISP) report to a level of 90% completion, which will include:
  - (1) Content submitted under the 50% ISP report.
  - (2) Hardware and systems listed above.
  - (3) Draft specifications for security items and detention equipment and furnishings.
  - (4) Panel functions.
- c. Fixtures, Furniture, Finishes and Equipment. Owner will provide an initial equipment list that Owner considers more than 70% complete. Consultant shall meet with the Owner's design team, to present and make recommendations on the available types of fixtures, furniture, finishes and equipment and their operational impact. Included in the discussion will be: toilets, showers, sinks, counters, and lights, dayroom, booking, office and other furniture, ceiling types, floor coverings, wall types, glazing types, booking and other equipment needs. Each shall be evaluated on long and short-term usage and the potential impact on operations and staffing costs. Consultant shall bring the equipment list to a level considered complete for the Design Development phase of the project.
- d. Staffing Analysis. Review the staffing estimates and operational costs from the program phase during the design development phase.
- e. Standards Compliance. Review Design Development documents prepared by Architect for compliance with California Jail Standards (Title 15 & 24) for the design and operations.
- f. Review of Architect's 100% Design Development Submittal. At the conclusion of the Design Development phase, Consultant shall conduct a formal Document Review with the project team. The drawings and specifications will be reviewed by each discipline including architecture, mechanical, electrical, plumbing and security to ensure that decisions made during the Design Development process are reflected in the project documentation.

- (1) Consultant shall review drawings from the perspective of whether or not they provide the best correctional practices. Consultant shall review Architect's outline specifications from the perspective of determining if they provide the appropriate level of product for the intended application, including locking devices.
  - (2) At the conclusion of the document review, Consultant shall prepare and submit a report identifying deficiencies found. This report shall be presented to the design team at the Review Comments Workshop for discussion and resolution. From that workshop, Consultant shall report Consultant's opinion of the Architect's response to each deficiency found in the Workshop, and more generally, Consultant shall assist the Owner in determining if the Architect's proposed design will result in a facility meeting the requirements of the Architectural Program.
- g. Other tasks to be performed by Consultant in this phase include:
- (1) Review progress for quality, cost and schedule.
  - (2) Attend engineering discussions and presentations including MEP, physical security and security electronics.
  - (3) Attend and contribute to Value Engineering Workshop. A formal Value Engineering (VE) Workshop will be held immediately following one of the design review workshops. The Workshop will be organized by the Construction Manager. Consultant shall be an active, integral participants in this exercise by reviewing the documentation, including specifications, developed at that point in time, for areas of potential cost savings. The intent is to analyze each discipline in terms of architecture, mechanical, electrical, plumbing and security in order to identify areas for potential cost savings without negatively impacting the design. Once the items are identified, their cost savings will be estimated by the Construction Manager, then Consultant shall participate in a meeting to, on an individual basis, acceptance or reject each VE item. Both the positives and negatives shall be identified by Consultant for each suggestion so as to ensure that no decision is made in a vacuum, and to assist Owner's effort to achieve economic integrity of the proposed jail.
4. Deliverables: Consultant shall furnish to Owner for the Schematic Design Phase, the following documents:
- a. Design Development Phase Review Report.
  - b. Staffing Analysis Review.
  - c. Written input to the ISP, to be delivered to Owner and Architect.
  - d. Consultant shall provide written opinion of each VE item that is adopted for further study in the VE Workshop.

**E. Enhanced Design Development Phase.**

1. Period of Service: After acceptance by Owner of the required deliverables in the Design Development Phase, Consultant shall perform to completion all services called for in the Enhanced Design Development Phase within the period of time

set forth in [Part 6.01.B](#), beginning at the time of Owner's issuance of authorization to proceed.

2. **Meetings**: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Design Review Workshop #1 at 30% complete, 2 days onsite.
  - b. Draft 60% Submittal and Design Review Workshop, 2 days onsite, followed by Local Vendor Outreach and Prequalification workshop, 2 hours (organized by Construction Manager).
  - c. Design Review Meeting in Sacramento with BSCC, DGS, & SFM – 1 day onsite
2. On the basis of the accepted Design Development documents Consultant shall perform the following services and deliver the following submittals:
  - a. Attend engineering discussions and meetings including MEP and physical security and security electronics.
  - b. Perform design, schedule and cost review at 60% and 100% Construction Document Phase.
  - c. Review Specifications at 30% and 60%.
  - d. Provide Owner written statement that construction documents are ready for bid, when Consultant believes they are ready.
  - e. Assist Owner in bringing the equipment list to a level Consultant considers complete.
  - f. Provide review and input to Owner and Architect for Architect's 100% Integrated Security Plan.
  - g. Assist in developing phasing and staging plan.
  - h. Review and provide written opinion on Construction Manager's prequalification documents including advertisements, contracts and RFP's.
  - i. Identify and recommend specialty bidders including but not limited to physical security and security electronics, precast cell manufacturer's, and glazing.
  - j. Consultant shall work with Owner, Construction Manager and Architect to revise the design as needed to bring the SPCC within the OACC.
4. **Deliverables**.
  - a. Provide design review comments at 30% and 60% completion.

**F. Construction Document Phase**

1. **Period of Service**: After acceptance by Owner of the required deliverables in the Enhanced Design Development Phase, and after State Public Works Board approval of Preliminary plans (to be confirmed in writing by OAR) Consultant shall perform to completion all services called for in the Construction Document Phase within the period of time set forth in [Part 6.01.B](#), beginning at the time of Owner's issuance of authorization to proceed.

2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:

- a. Draft 100% Submittal and Design Review Workshop, 2 days onsite.

**G. Bidding Phase.**

1. Consultant shall proceed with the Bidding Phase only after:
  - a. Written authorization to proceed with the Bidding Phase.
  - b. Owner acceptance of the 100% CD back-check documents.
2. Meetings: None
  - a. Consultant shall participate with Owner and Construction Manager in evaluation of prequalification submittals.
3. Consultant shall advise Owner and Construction Manager as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the bidders for those portions of the work as to which such acceptability is required by the bidding documents.
4. Consultant shall advise Owner and Construction Manager concerning, and determine the acceptability of, substitute materials and equipment proposed by bidders.
5. Owner and /or Construction Manager will administer the Bidding process.
6. Potential Additional Services Where Bids Exceed Budget: If Owner requires Architect to revise the scope of work to be performed by Construction Manager and trade subcontractors or its quality, or both, so as to reduce the Project Construction Cost for the work, while still meeting Owner's Project objectives and the Project Scope of Work stated in the BSCC JCA and CDCR PDCA, Consultant will be asked to participate in meetings and discussions to advise Owner on proposed scope reductions and their impact on meeting Owner's needs, and to review changes made to construction documents for impacts. Consultant will be paid for such services, when services are directed by the OAR in writing, in accordance with Part 11.03.

**H. Construction Phase.**

1. Period of Service: The Construction Phase will commence with the issuance to the Construction Manager of the Notice to Proceed with Construction under the Construction Management Professional Services Agreement, and will terminate as provided in [Part 12, "Term And Termination"](#).
2. Meetings: None
3. Services to include review of shop drawings related to PE expertise. Review and comment on construction changes including substitutions of material, fixtures, finishes, etc. Coordinate with architect and contractor on issues brought forth by the County.
4. Any onsite trip required will either be coordinated with transition phase trips or will be considered an added services and will be authorized in advance by the County.

**1. Transition Planning Phase.**

1. Period of Service: The Transition Planning Phase will be awarded simultaneously with the Programming Phase, and shall commence upon written authorization from Owner under Consultant's Professional Services Agreement, and will terminate as provided in [Part 12, "Term And Termination"](#).
2. Meetings:
  - a. Consultant shall attend five (5) meetings as part of Consultant's Basic Services.
  - b. After of award of this Project Phase and before scheduling any of these meetings, Consultant shall provide to OAR a specific recommendation for each meeting, giving the purpose, required attendees, and time frame, and shall schedule the meetings with the Sheriff's Office staff and the OAR.
  - c. Two (2) onsite meetings will be attended by Kevin Warwick. His tasks will include: Re-entry planning and preparation for staff training, review of present program quality assurance and fidelity of the programming, finalize program schedules, work on the quality assurance plans and develop onsite training materials for the staff as they prepare for opening of the units in the STAR Facility, and how those programs may coordinate with existing Jail programs. Kevin Warwick will provide the training for programming staff and other key personal (correctional assigned to those units) related to these units there would be two days of on-site training related to best practice programming and curriculum to be utilized in these units. This will also include some training for correctional staff assigned to the units.
3. Consultant shall review with Owner the Staffing Plan at the time of construction contract award and 50% construction completion, and recommend in writing any needed revisions.
4. Consultant shall guide and assist Owner's transition team through the transition process. The transition process can be broken down into eight major tasks with various activities for each task. Consultant's role will be to lead, guide and provide expertise, and encourage the team through to completion. Consultant shall provide electronic templates and other materials to assist the transition team develop required products, utilizing Consultant's expertise and pre-developed products to otherwise reduce the transition team's effort. Consultant shall assist the team in completing the documents and review of materials developed by the team. Owner anticipates that the transition team and Inmate Programs Committee, not the Consultant, will complete a majority of the transition work that must be performed to transition into the new facility. For example, Owner understands the "policy and procedures manual" must be written by the Owner's transition team to maximize its effectiveness. Consultant shall assist in the transition team in at least the following ways:
  - a. Organizing and training the transition team.
  - b. Developing the transition plan, schedule, and budget.
  - c. Assisting the team in developing the policy and procedure manual.
  - d. Developing job descriptions and criteria for hiring new positions.



- e. Designing training materials and delivering training for staff on the following topics; facility operation and philosophy, direct supervision, and management and mid-management roles.
  - f. Assisting in facility shakedown, and move logistics.
5. Deliverables.
- a. Electronic Templates for Transition Planning related documents.
6. Recommended changes to Staffing Plan, if necessary.
- I. **Operation/Project Close-Out Phase**- No services by Consultant aside from those included in Transition Planning phase above.
- J. **Warranty Phase** - No services by Consultant.

## **PART 6 - CONSULTANT'S SCHEDULE**

### **6.01 Project Schedule – Project Establishment Milestones.**

- A. The Owner's Project Schedule is established in the SPWB Approved Project Establishment Package (Exhibit H) and may be modified only by written approval of the BSCC and CDCR. Where the PDCA uses the term "Preliminary Plans", Consultant shall equate that to the Schematic Design phase drawings and outline specifications as defined in this PSA. Where the PDCA uses the term "Working Drawings", Consultant shall equate that to the Construction Documents phase drawings and specifications defined in this PSA.
- B. **Completion Milestones:** Unless otherwise provided for in a Project Phase, Consultant shall complete the following Milestones by the corresponding dates shown below, assuming the PSA award date shown, and where "completion" is defined as having incorporated review comments of Owner and State agencies:

1. County Awards PSA	March 2015
2. Architectural Program	May, 2015
3. Schematic Design	May, 2015
4. Design Development	June, 2015
5. Enhanced Design Dev	October, 2015
6. Construction Docs	April, 2016
7. Advertise for Bids	August, 2016
8. Bid Opening	October, 2016
9. Notice to Proceed	January, 2017
10. Construction Complete	October, 2018
11. Occupancy	April, 2019

### **6.02 Coordination with Project Master Schedule and Owner Operations.**

- A. Consultant shall complete or cause to be completed all services required under this Agreement in accordance with the Master Schedule and Milestone Schedule to be developed in conjunction with the Construction Manager and the Owner, and maintained by the Construction Manager.
- B. For each phase of Service under this PSA, Consultant shall prepare and submit for Owner's acceptance a task list identifying the principal tasks (and subtasks) defining the scope of work of each phase. The main purpose of the task list shall be to promote coordination and scheduling of the Owner and third parties whose actions might impact Consultant's progress.

- C. The task list shall list all points of Owner and third party interface, for example Board docketing dates, approvals, reviews, Consultant coordination checks, design input and supplying information. The task list shall include a listing of Consultant's anticipated specific requirements for information, decisions or documents from Owner necessary for Consultant's performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project.
- D. For the Project, Consultant shall prepare, submit for Owner's acceptance, and maintain a design schedule detailing Consultant's scheduled performance of the Services. The schedule shall comply and coordinate with the Owner's Master Schedule and Milestone Schedule including all updates to the Master Schedule to be maintained by the Construction Manager.
- E. Consultant shall submit a preliminary schedule of Consultant's services for work through the Construction Documents phase within twenty (20) days of commencement of the Programming Phase (covering in summary fashion all Services of each phase of the Project).
- F. For each succeeding phase of Services, Consultant shall supplement this schedule with a detailed schedule covering by task (and subtask) Consultant's work during the succeeding phase of Services. (The required schedule supplement shall be submitted as part of Consultant's deliverables at the conclusion of each phase of Services).
- G. Consultant shall adjust and cause its Subconsultants to adjust activities, personnel levels, and the sequence, duration and relationship of services to be performed in a manner that will comply with the accepted schedules.

### **6.03 Each Project Phase Shall Contain a Consultant's Schedule.**

- A. Consultant will perform all Services and Deliverables within the time and project schedule stated in the Project Phase, including milestones and interim milestones, if any. Time is of the essence in this PSA.
- B. Consultant shall provide and maintain Project staffing levels as necessary to perform the Services within the time provided in the Master Project Schedule.

## **PART 7 - COST CONTROL**

### **7.01 Owner Approved Construction Cost (OACC).**

- A. The OACC is defined as the budgeted construction cost at the point of construction contract bid opening. Consultant shall treat the OACC so identified as the Owner's required construction cost for the Project. Each Project Phase will specify the OACC for the Project or Project part covered by that Project Phase. The OACC will include any bid alternates as defined by the OAR.
- B. The OACC will not exceed construction costs defined in the JCA or PDCA, or their duly executed amendments.

## **PART 8 - INDEMNIFICATION & INSURANCE**

- A. Indemnification and Insurance requirements are set forth in [Exhibit F, "Indemnification & Insurance"](#).

- B. Prior to execution of this PSA, Consultant shall furnish to Owner Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this PSA as set forth in Exhibit F, which is attached and made a part of this PSA. Consultant shall maintain all required insurance throughout the term of this PSA and as otherwise provided in [Exhibit F](#). In the event Consultant fails to maintain any required insurance, and notwithstanding [Part 11](#) below, Owner may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this PSA (or Consultant shall promptly reimburse Owner for such expense).

## **PART 9 - REPRESENTATION BY COUNSEL**

- A. Both parties to this PSA were represented by counsel in the negotiation and execution of this agreement.
- B. The parties are aware of the provisions set forth in California Civil Code §1717 and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in [Part 8, "Indemnification & Insurance"](#), applies only in the indemnification context in [Part 8, "Indemnification & Insurance"](#).

## **PART 10 - HAZARDOUS MATERIALS**

### **10.01 Responsibility for Hazardous Materials.**

- A. Owner acknowledges that Consultant has no special knowledge or expertise regarding asbestos or other hazardous materials.
- B. Unless otherwise provided in this PSA, or unless Owner has provided documented information to Consultant regarding the presence or potential presence of such hazardous materials Consultant and its Subconsultants have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or any other toxic substance.

### **10.02 Hold Harmless Clause.**

- A. To the fullest extent permitted by law, Owner agrees to bring no claim against Consultant and its Subconsultants and to defend, indemnify, and hold harmless Consultant and its Subconsultants from third party claims relating to the investigation, detection, abatement, replacement, or removal of asbestos or other hazardous material, or relating to sudden or gradual escape or release of hazardous contaminants of any kind into or on the land, the atmosphere, or any water course or body of water, excepting only such claims which arise out of the sole negligence or willful misconduct of Consultant or its Subconsultants.

## **PART 11 - COMPENSATION & PAYMENT**

### **11.01 Compensation.**

- A. Payments will be made as set forth herein and as authorized in each Project Phase.
  - 1. Maximum Compensation Limit.
    - a. Each Project Phase will specify a Maximum Compensation Limit (MCL) by Owner to Consultant for that Project Phase. The MCL includes all

authorized Services and authorized Reimbursable expenses. Total payment by Owner pursuant to any Project Phase will not exceed the MCL specified in the Project Phase, and Consultant shall provide all Services and Deliverables set forth in each Project Phase, compensation for which will not exceed the specified MCL.

2. Consultant's Hourly Rate Schedule.
  - a. Consultant's Hourly Rate Schedule is set forth in [Exhibit A](#), "Consultant's Hourly Rates".
  - b. Modifications to Consultant's Hourly Rate Schedule to include out-years beyond the rates identified in Exhibit A will be negotiated by the parties using as a benchmark the prevailing increase for similar Consulting Services in the Central Coast area and are subject to approval as an amendment to the PSA by the OAR.
  - c. Non-Fixed fee Services provided by Subconsultants are subject to approval by the OAR and documented in a Project Phase. Administrative mark-up by Consultant on Subconsultant invoices is not permitted.
  - d. Where the class of persons authorized to provide specific Services is not designated in a Project Phase, Services shall be provided by a qualified person who is in a class that has the lowest rate of payment among those classes that contain persons who are qualified to provide the Services.
3. Consultant's Milestone Schedule: Each Project Phase shall contain a Consultant's Milestone Schedule prepared in accordance with [Part 6, "Consultant's Schedule"](#).
4. Changes: If, during the term of a Project Phase, circumstances constituting a material change in scope as described in [Part 4.02, "Changes In Scope"](#), arise, Consultant will be entitled to compensation therefore, within the Total Payment Limit for that Project Phase. If such changes mean that the scope of the Project Phase cannot be completed as originally envisioned, then Consultant shall immediately inform the OAR and assist OAR in allocating the remaining compensation among the unfinished Services in order to accomplish as much of the original intent as possible within the Total Compensation Limit of the Project Phase. If such changes mean the full services of the PSA cannot be completed within the Maximum Compensation Limit of the PSA, payment to Consultant for such changes cannot be made without a modification to the PSA. Such modification can be made only by the County Board of Supervisors.
5. Prevailing Wages: Consultant acknowledges that some of the work performed on site to support the Services under this PSA may be "public works" within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public works. To the extent applicable, Consultant has included (and will include) consideration for this obligation in calculating compensation and cost estimates under this PSA, and Consultant shall comply with any such applicable prevailing wage law requirements at its sole expense.

### 11.02 Reimbursable Expenses.

- A. When travel is authorized as a reimbursable expense in a Project Phase, Consultant agrees it will be reimbursed at rates not exceeding the Federal rates for per diem and mileage, not exceeding airfare costs for coach class, and not exceeding car rental costs for medium size autos. Consultant shall provide receipts in a manner that conform to Federal requirements. All invoices must show travel expenses separately. The JCA considers travel costs ineligible for State reimbursement.
- B. When authorized in the Project Phase, Owner will reimburse Consultant, at cost, for reasonable expenses incurred in the performance of the Services. Only the following expenditures, made by Consultant with Owner's advance written approval, are payable as reimbursable expenses within the Total Compensation Limit of any Project Phase.
  - 1. Extra-ordinary "office" expenditures specifically related to executing the scope of work in Project Phases, including overnight mailing such as Federal Express, and additional copies of Deliverable Documents, requested by OAR over and above those required by the terms of the Project Phase; and mileage reimbursement to attend meetings beyond those specified in the scope of Project Phases. Any individual expense in excess of \$10.00 shall be supported by a copy of the receipt.
  - 2. Other reimbursable expenses specifically identified in a Project Phase.

### 11.03 Additional Services.

- A. Performance: Services required to be performed by Consultant upon request by Owner, which are described hereinafter as Additional Services, must be authorized by Owner in writing prior to performance.
- B. Compensation for Additional Services: Consultant shall be compensated for Additional Services as set forth in Exhibit A unless the parties agree on lump sum compensation for particular work activities.
- C. Services: The following services shall be considered Additional Services:
  - 1. Making revisions in reports, drawings, or other documents, if:
    - a. Such revisions are not necessary because of a deficiency in Architect's work.
    - b. Such revisions are inconsistent with written approvals or instructions previously given by Owner, or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of Architect.
  - 2. Changes in scope, such as revisions of approved reports or design documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.
  - 3. Required out-of town travel beyond limits specified in Exhibit A.
  - 4. Assistance in connection with bid protests and rebidding when such assistance is required by matters unrelated to Consultant's deficient performance.

5. Preparing to serve or serving on behalf of Owner as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.
  6. Preparation of applications and supporting documents for governmental grants and permits. However, participating in consultations and evaluation of the effect of associated requirements on the design requirements of the Project is within Consultant's Basic Services scope.
  7. Assisting in actual claims resolution efforts when such assistance is required by matters unrelated to Consultant's performance. Providing any other services requested by Owner that are not otherwise included in this PSA and are not customarily furnished in accordance with generally accepted architectural, engineering and other professional practice.
  8. All work or services required as a result of any failure by Consultant to perform its obligations under this PSA shall be performed by Consultant at no additional cost as part of Basic Services and shall not be deemed Additional Services.
  9. Providing additional insurance coverage requested by Owner beyond that specified in the Agreement, except that no markup will be allowed. Consultant shall promptly comply with such request.
- D. Supplementary Services & Deliverables: Owner may establish a Supplemental Services Allowance (SSA) in a Project Phase for the performance of contingent services not specifically identified within the Project Phase Scope of Services and Deliverables, but of services similar in scope specified in the Project Phase, and compensation for which is included in the MCL of the Project Phase. Consultant will only commence work pursuant to the SSA following prior, written authorization of Owner's Authorized Representative.

#### **11.04 Payment.**

- A. Payment Requests: Owner will make all reasonable efforts to make payments within thirty (30) Days after the OAR's approval of the Consultant's correct Payment Request.
- B. Invoices: Consultant will submit Payment Requests on the forms shown in [Exhibit E](#), "Sample Invoice," not more than once each month.
- C. Progress Payments: Owner may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by Owner.
- D. Neither Consultant, nor authorized subconsultants, may provide services to the Construction Contractor or any Subcontractor pursuant to separate agreement for any part of the Project.

#### **11.05 Release of All Claims.**

- A. Prior to final payment under the PSA, Consultant shall execute and deliver to Owner a release of all claims arising under the PSA, other than such claims, if any, as may be specifically excepted from the release for the reasons and in the amounts stated in the release.

#### **11.06 Timely Billings.**

- A. Consultant agrees to bill Owner on a timely basis and not later than ninety (90) Days after:
  - 1. Services are performed,
  - 2. Reimbursable Expenses are incurred, or
  - 3. Billings are otherwise due pursuant to the terms of the Project Phase.
- B. Owner has no liability for payment of, and has sole discretion to pay or decline payment of, any billings submitted after the expiration of this ninety (90) Day period.

**11.07 Consultant's Accounting Records.**

- A. Accounting System & Records Retention: Consultant shall maintain an accounting system in accordance with current standards of accounting and financial reporting, and in compliance with the requirements of the JCA and PDCA documents, for the purpose of supporting payments for Services authorized under this PSA. Consultant shall retain and make accounting records available in accordance with [Part 14-9 "Records, Audit, and Review"](#).
- B. Applicability to Subcontracts: Consultant shall incorporate the above-stated accounting and audit requirements into all subcontracts exceeding Ten Thousand Dollars (\$10,000) in value pursuant to this PSA or any modification thereof.

**11.08 Maximum Payment to Consultant.**

- A. Excluding Additional Services performed only by a modification to this PSA, the Maximum Payment to Consultant for all services under this PSA, and when combining all Project Phases, shall not exceed **\$299,550**. The Maximum Payment shall not exceed progress on the Project Services described in this PSA to be performed by Consultant and the percentage allowances under the following paragraph.

**11.09 Maximum Payment to Consultant by Phase.**

- A. For each of the following phases, Consultant will be eligible for 80% of the pay percentages shown below upon first submittal of the full set of deliverables, and the balance upon incorporation of State agency comments where State agency requires resubmittal, or when State agency notifies OAR that it has no such comments.

<b><u>PROJECT PHASE</u></b>	<b><u>AMOUNT</u></b>
1. Programming	\$53,350
2. Schematic Design	\$49,170
3. Design Development	\$48,850
4. Enhanced Design Development	\$35,140
5. Construction Documents	\$16,300
6. Bidding	\$0
7. Construction	\$14,900
8. Transition Planning	\$81,840
9. Warranty	\$0

**PART 12 - TERM & TERMINATION**

**12.1 Owner's Rights.**

- A. Termination for Convenience.
  - 1. Owner's Authorized Representative may, by written notice to Consultant, terminate all or part of this PSA or any Project Phase at any time for Owner's convenience. Upon receipt of such notice, Consultant shall immediately cease all work as specified in the notice.
  - 2. If this PSA or any Project Phase is so terminated, Consultant will be compensated as set forth below.
- B. Termination for Breach.
  - 1. If Consultant violates any of the covenants or agreements of this PSA or a Project Phase, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA or any Project Phase, and does not cure such failure or violation within thirty (30) days, or such shorter period as the Owner may determine is necessary and appropriate, after receipt of written notice from Owner's Authorized Representative specifying such failure or violation, Owner may terminate this PSA and any or all uncompleted Project Phases.
  - 2. Owner will provide Consultant with written notice as to the effective date of termination, and Consultant is not entitled to compensation for Services or expenses beyond the specified termination date.
  - 3. If, after notice of termination for breach of this PSA or any Project Phase, it is determined that Consultant did not breach this PSA or the Project Phase, the termination will be deemed to have been made for Owner's convenience, and Consultant will receive payment, which is allowed by this PSA for a termination for convenience.
- C. The rights and remedies provided herein to Owner are in addition to any other rights and remedies provided by law, or this PSA.

**12.2 Consultant's Compensation Upon Termination.**

- A. In the event of Owner's termination of this PSA or any Project Phase, Consultant will receive compensation as follows:
  - 1. For fully performed and accepted items of Service, and authorized Reimbursable Expenses pursuant to any Project Phase, compensation will be in the amount specified in the Project Phase for that item of Service or expense.
  - 2. For items of Service on which Owner has issued an Authorization to Proceed but which have not been fully completed and accepted, Consultant will be compensated for its Services accepted by Owner in an amount which bears the same ratio to the total fee otherwise payable for the performance of that Service as the Services performed bear to the total Services necessary for the full performance of that Service.
- B. In no event will the total compensation paid for any item of Service exceed the value specified in the applicable Project Phase for that item of Service.



### **12.3 Delivery of Documents.**

- A. Upon any termination of this PSA or any Project Phase, Consultant shall furnish Owner all documents and Instruments of Service prepared pursuant to this PSA or such Project Phase(s), whether complete or incomplete, and shall not be liable for any further use of any documents or Instruments of Services that are not completed and sealed by the Consultant when delivered to the Owner. Consultant may retain a copy for its records.

### **12.4 Suspension of Services.**

- A. Owner may, without cause, order Consultant to suspend, delay or interrupt Services pursuant to this PSA, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an Excusable Delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.
- B. Notwithstanding anything to the contrary contained in this Paragraph, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

## **PART 13 - DISPUTE RESOLUTION**

### **13.1 Consultant's Questions & Concerns.**

- A. Questions regarding the terms, conditions and Services of this PSA or any Project Phase will be decided by the Owner who will furnish the decisions to Consultant in writing within thirty (30) Days after receiving a written request from Consultant.
- B. Disputes between Consultant and Owner will be resolved by arbitration after the project. Consultant shall perform disputed services according to Owner's direction so as not to delay the project schedule.

### **13.2 Dispute Resolution.**

- A. Alternate Dispute Resolution (ADR): Owner intends to use ADR techniques including Partnering and Mediation at a time that will not impact the project schedule.
- B. Consultant and its subcontractors shall participate in all ADR efforts as directed by owner.
- C. The cost of Partnering training facilities and facilitator will be borne by Owner.

### **13.3 Negotiations Before and During Dispute Resolution.**

- A. Negotiations to resolve disputes before and during ADR are initiated for settlement purposes only and are not binding unless otherwise agreed by Owner and Consultant.

### **13.4 Not Used.**

## **PART 14 - MISCELLANEOUS PROVISIONS**

### **14.1 Capitalization and Formatting.**

- A. Terms capitalized in this PSA and subsequent Project Phase include those that are Specifically defined:
  - 1. Titles of Parts or paragraphs,
  - 2. Titles of reports or Deliverables, or
  - 3. Titles of other documents.
- B. Unless otherwise indicated, **highlighted**, **emboldened**, *italicized*, or underlined text is not indented to imply special significance but serves merely as an aid to the reader to distinguish or quickly reference selected text.
- C. The captions of the Parts and paragraphs are for convenience only and will not be deemed relevant in resolving any question of interpretation or construction of any such Part or paragraph.

#### **14.2 Force Majeure.**

- A. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees, agents, or representatives.

#### **14.3 Waiver.**

- A. In the event any provision of this PSA is held to be invalid and unenforceable, the remaining provisions will be valid and binding on the parties.
- B. One or more waivers by either party of any provision, term, condition or covenant will not be construed by the other party as a waiver of a subsequent breach.

#### **14.4 NOT USED.**

#### **14.5 Timely Approvals.**

- A. Whenever the approval of Owner or Consultant is required pursuant to this PSA or any Project Phase, such approval shall not be unreasonably withheld or delayed. Time is of the essence in the performance of each term of this PSA.

#### **14.6 Ownership & Use of Instruments of Service.**

- A. All Instruments of Service and other materials prepared by Consultant, in whatever media, are the property of Owner. Consultant shall provide Owner with such Instruments of Service and materials at appropriate times during this PSA, and on termination or suspension of this PSA or any Project Phase. Consultant may retain a copy for its records. Consultant does not convey, assign or transfer the intellectual property rights it has so as to limit its ability or right to develop, design or work on other projects of or for its other clients.
- B. In the event Owner desires to re-use the Instruments of Service, in total or in part, on this Project site or any other site, or to complete any incomplete portion of construction documentation, Owner will defend, indemnify, and hold Consultant harmless from any and all claims, loss, damage, defense costs, expense, and other costs resulting from such use of Consultant prepared documents, unless Owner enters into an agreement with Consultant for Services in connection therewith.
- C. Consultant is not entitled to any fees for Owner's use of Instruments of Service unless Owner enters into an agreement with Consultant for Services in connection therewith.

- D. Copies of data exchanged by, through, and between Owner and Consultant that may be relied upon are limited to the printed copies. Computer-generated files, disks, or tapes of text, data or graphics that are furnished, are only for the mutual convenience of the parties. Any risk of translation or reliance on information obtained or derived from the computer-generated material will be at the user's sole risk, and no representations are made, either expressed or implied, as to the long-term performance of data thus transferred.

#### **14.7 Reliance.**

- A. Unless otherwise indicated, Consultant may rely on the accuracy and technical quality of documents provided by Owner or the Owner's consultants.
- B. Consultant and Owner acknowledge that remodeling or rehabilitation work may require visual inspection to verify adequacy of "as-built" conditions and that Consultant cannot be responsible for those conditions not visible without exposing concealed conditions or destructive investigation. If OAR authorizes opening concealed conditions or destructive testing, Consultant will be responsible for accurately documenting the condition of those areas inspected.
- C. Consultant's review of Contractor's Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents.
- D. When the Contract Documents require Contractor to provide professional certification of performance characteristics of materials, systems or equipment, Consultant will be entitled to rely on such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

#### **14.8 Proprietary or Confidential Information of Owner; Publicity.**

- A. Consultant acknowledges and agrees that, in the performance of the Services under this PSA or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by Owner and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Owner. Consultant agrees that all private, confidential, or proprietary information disclosed by Owner to or discovered by Consultant in the performance of its Services shall be held in strict confidence and used only in performance of the PSA. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Owner's interests where such confidential information could be used adversely to the Owner's interests. Consultant shall notify the Owner immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with the Services pursuant to this PSA.
- B. Any publicity or press releases with respect to the Services shall be under the Owner's sole discretion and control. Consultant shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without Owner's

- prior written consent. Consultant shall have the right, however, without Owner's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this PSA. Consultant acknowledges that Project is the construction of a secure jail facility, and that plans of the facility are confidential. Consultant shall not release copies of plans or other documents related to project without express written consent of Owner.
- C. The provisions of this Section 14-08 shall remain fully effective indefinitely after termination of Services to the Owner hereunder.

#### **14.9 Records, Audit and Review.**

- A. Consultant shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such records for the Record Maintenance Period specified in [Part 5.01.B.2](#). As an alternative to retaining such records, Consultant may deliver all such records to OAR within a reasonable time after termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.
1. Records Required. The records required to be maintained by Consultant shall include, but not be limited to: all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to Project.
  2. Business Records. Business Records are generally defined to include full and adequate records in accordance with Owner requirements showing actual costs incurred by Consultant in its performance of this PSA. Contractor shall make available to Owner during business hours, business records including accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, time cards and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to Owner or relative to Consultant's activities under this PSA.
- B. Retention of Records.
1. Consultant shall maintain all items described in this Section in an accessible location and condition for the period stated above.
  2. Consultant shall not destroy any Project records until after advising Owner and allowing Owner a reasonable opportunity to accept and store the records.
- C. Production and Audit of Records.
1. Consultant shall, within forty-eight (48) hours written notice, permit authorized State agencies with jurisdiction, Owner, and Owner's authorized agents, officers,

and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this PSA, whether funded in whole or in part under this PSA.

2. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from Owner's offices at Santa Barbara, California, Consultant shall, upon Owner's request and at Consultant's sole cost and expense, make such items available to Owner, and Owner's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay Owner its reasonable and necessary costs incurred in inspecting Consultant's books and records including, but not limited to, travel, lodging and subsistence costs.
  3. The State of California and any other governmental agency having an interest in the subject of this PSA shall have the same rights conferred upon Owner by this Section.
- D. The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this PSA.

#### **14.10 Discrimination, Equal Employment Opportunity and Business Practices.**

- A. Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, Owner ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.
- B. County Ordinance on Unlawful Discrimination.**
1. The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) respecting real property, goods and/or services entered into by the County of Santa Barbara including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the consultant is discriminating or has discriminated against any person in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical or mental disability, Vietnam era veteran/disabled, age, medical condition, marital status, ancestry, sexual orientation, or other legally protected status. This right of termination extends to contracts entered into by the County of Santa Barbara or by its joint powers, agencies or agents so long as the county obtains the consent of those parties.
  2. Such finding may only be made after consultant has had a full and fair hearing on notice of thirty days before an impartial hearing officer at which hearing consultant may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of

discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, consultant may move in the appropriate court of law for damages and/or to compel specific performance of a consultant or agreement if any of the above procedures are not afforded to the consultant. If consultant is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expenses of such hearing, including reasonable attorneys' fees, to consultant in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If consultant is found to have engaged in such unlawful discriminatory employment practices, consultant shall pay all such costs, expenses and attorneys' fees.

3. Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the consultant shall forthwith reimburse the county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid to consultant under the terms of the contract or agreement.
4. Nothing in this Section shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to consultant, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.
5. With respect to employment discrimination, employment practices shall include, but are not limited to, employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation or selection for training and apprenticeship and probationary periods.
6. Consultant shall permit access at all reasonable times and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to consultant reasonably prior to the time consultant is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agents of the county. No records or copies of such records may be removed from the premises of consultant, and no disclosure, oral or written, of such record may be made to third parties except as provided within the agreement. Provided, however, that in the event of a hearing to determine whether or not consultant is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.
7. Failure to fully comply with any of these provisions shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the

county shall be notified that this Section applies to their contract or agreement with the County of Santa Barbara.

#### **14.11 Drug-Free Workplace Policy.**

- A. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Owner premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this PSA.

#### **14.12 Compliance with Americans with Disabilities and Rehabilitation Act.**

- A. Consultant acknowledges that, pursuant to the Americans with Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this PSA in a manner that complies with the standard of care established under this PSA regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this PSA and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this PSA. Consultant shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this PSA.

#### **14.13 NOT USED.**

#### **14.14 Agreement Made in California; Venue.**

- A. This PSA shall be deemed to have been executed in the City of Santa Barbara, County of Santa Barbara. The formation, interpretation and performance of this PSA shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this PSA shall be in the Superior Court of the County of Santa Barbara unless the parties agree otherwise in a written amendment to this PSA.
- B. The parties shall execute **two** originals of this PSA, both of which shall be deemed originals.

### **PART 15 - NOTICES**

- 15.01** All notices will be deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as shown in Exhibit G, “Notices”.

### **PART 16 - LIMITS and MODIFICATIONS OF AGREEMENT**

- 16.01** This PSA between the parties hereto regarding the subject matter of this PSA shall constitute the exclusive statement of the terms of the parties’ agreement. The PSA, and any written modification to the PSA, shall supersede any and all prior

negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this PSA or written modification, and the parties represent and agree that they are entering into this PSA and any subsequent written modification in sole reliance upon the information set forth in the PSA or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this PSA.

- 16.02** To the extent this PSA conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this PSA shall control.
- 16.03** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both Owner and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 16.04** Consultant, in any price proposals for changes in the scope of services that increase the PSA amount, or for any additional services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 16.05** Consultant and its Subconsultants shall, upon request by Owner, permit inspection of all original unaltered PSA bid estimates, subcontract agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 16.06** Changes in the scope of services made pursuant to this Paragraph and extensions of the Term of the PSA necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this PSA.
- 16.07** Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of Owner. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to Owner, unless otherwise indicated by the context.

## **PART 17 - EXHIBITS**

- 17.01** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which the Consultant is obligated, which breach would have a material effect hereon.



**17.02** The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full:

- A. [Exhibit A, "Payments to Consultants"](#)
- B. [Exhibit B, "Consultant's Staff & Subconsultants"](#)
- C. [Exhibit C, "Compensation"](#)
- D. [Exhibit D, "General Design Checklist"](#)
- E. [Exhibit E, "Sample Invoice Format"](#)
- F. [Exhibit F, "Indemnification And Insurance Requirements"](#)
- G. [Exhibit G, "Notices"](#)
- H. [Exhibit H, "County of Santa Barbara STAR Project Establishment Package"](#)
- I. [Exhibit I, "California Department of Corrections and Rehabilitation Sample Project Construction and Delivery Agreement"](#)
- J. [Exhibit J, "California Department of Corrections and Rehabilitation Sample Project Construction and Delivery Agreement"](#)

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**PART 18 - SIGNATURES**

**Agreement for PROGRAM PLANNING, ARCHITECTURAL REVIEW, TRANSITION PLANNING AND RELATED PROFESSIONAL SERVICES**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
JANET WOLF, CHAIR  
BOARD OF SUPERVISORS

Date: \_\_\_\_\_

ATTEST:  
MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

CONSULTANT: Liebert & Associates

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Dennis Liebert, President

**APPROVED AS TO FORM:**  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

**APPROVED AS TO ACCOUNTING FORM:**  
ROBERT W GEIS, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Deputy County Counsel

By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**  
RAY AROMATORIO, ARM, AIC  
RISK MANAGER

**RECOMMENDED FOR APPROVAL:**  
MATTHEW P. PONTES  
DIRECTOR OF GENERAL SERVICES

By: \_\_\_\_\_  
Risk Manager  
Risk Manager

By: \_\_\_\_\_  
Department Head

**END OF PART 18**  
**END OF AGREEMENT**

**EXHIBIT A**

**PAYMENTS TO CONSULTANT**

The following rates, which include all overhead, administrative costs, and profit, will be used in arriving at fees for hourly-rate Services. Any rate increases approved by the OAR shall take effect on the yearly anniversary of the Board of Supervisors' approval of the PSA. Modifications to Consultant's Hourly Rate Schedule to include out-years beyond the rates identified in Exhibit A, and the addition of personnel not identified in Exhibit A, will be negotiated by the parties using as a benchmark the prevailing rates/increase for similar Consulting Services in the Consultant's principal office location, and are subject to approval as an administrative modification to the PSA by the OAR.

CONSULTANT FIRM NAME: **Liebert & Associates, Inc.**

Billable Hourly Rate (\$)

Consultant/Job Title*	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Firm Principal	235	235	235	235	235	235

**END EXHIBIT A**

## **EXHIBIT B**

### **CONSULTANT'S STAFF & SUBCONSULTANTS**

- A. Consultant declares that all the Principal-in-Charge will be Mr. Dennis Liebert.
- B. Consultant will employ Subconsultants it deems appropriate to the complexity and nature of the required Services and said Subconsultants shall, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant shall obtain Owner's approval of all Subconsultants. Upon Owner's request Consultant shall provide copies of all Subconsultant contract agreements to Owner.
- Inmate Programming Expertise – Kevin Warwick
- C. None of the above named Staff or Subconsultants shall be replaced without OAR's approval pursuant to an amendment to this PSA. If Consultant's staff person or Subconsultant fails to perform to the satisfaction of Owner, on written notice from the OAR, Consultant will have fifteen (15) calendar Days to remove that person from the Project and provide a replacement acceptable to OAR. In that event Consultant shall submit the name of a qualified replacement for OAR's approval.

**END EXHIBIT B**



County of Santa Barbara  
General Services  
**Capital Projects Division**

**EXHIBIT C**  
**COMPENSATION**

<p><b>PSA BETWEEN THE COUNTY OF SANTA BARBARA AND Liebert &amp; Associates, Inc. FOR Program Planning, Architectural Review, Transition Planning and Related Professional Services</b></p>
<p><b>PROJECT TITLE:</b> Northern Branch Jail STAR Project</p>

**This Table For Owner's Use**

<i>Item</i>	<i>Fund</i>	<i>Dept No</i>	<i>Acct #</i>	<i>Program</i>	<i>OrgUnit</i>	<i>Activity</i>	<i>Amount</i>
<b>PE Consultant Programming and Design (Specialty Management)</b>	<b>0033</b>	<b>981</b>	<b>7460</b>	<b>4000</b>	<b>0004</b>	<b>3208</b>	<b>\$182,160</b>
<b>PE Consultant Programming and Design - Travel</b>	<b>0033</b>	<b>981</b>	<b>7460</b>	<b>4000</b>	<b>0005</b>	<b>3209</b>	<b>\$35,550</b>
<b>PE Consultant Transition Planning</b>	<b>0033</b>	<b>981</b>	<b>7460</b>	<b>9000</b>	<b>0004</b>	<b>3901</b>	<b>\$70,540</b>
<b>PE Consultant Transition Planning - Travel</b>	<b>0033</b>	<b>981</b>	<b>7460</b>	<b>9000</b>	<b>0005</b>	<b>3902</b>	<b>\$11,300</b>

**COMPENSATION TABLE**

Project Phase	Basic Services	Other Cost Item	Supplementary Services	NTE Travel and Expenses	Maximum Compensation Limit for Project Phase
Programming	\$42,700	\$0		\$10,650	\$53,350
Schematic Design	\$40,820	\$0		\$8,350	\$49,170
Design Development	\$40,500	\$0		\$8,350	\$48,850
Enhanced Design Development	\$29,140	\$0		\$6,000	\$35,140
Construction	\$14,100	\$0	\$0	\$2,200	\$16,300



County of Santa Barbara  
General Services  
**Capital Projects Division**

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Documents					
Bidding	\$0	\$0	\$0	\$0	\$0
Construction	\$14,900	\$0	\$0	\$0	\$14,900
Transition Planning	\$70,540	\$0	\$0	\$11,300	\$81,840
Warranty	\$0	\$0	\$0	\$0	\$0
<b>Maximum Compensation Limit on PSA</b>					<b>\$299,550</b>

Consultant shall not perform nor bill for Supplementary Services without written authorization from OAR. Consultant shall submit appropriate documentation and information to support each invoice, including a narrative description of services performed during the period; completed milestones and deliverables. Consultant shall break-out cost items by line items identified in the Compensation table, and label each category the same title. See Exhibit E for example.

**END EXHIBIT C**



County of Santa Barbara  
General Services  
**Capital Projects Division**

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**EXHIBIT D**

Not Used

**END EXHIBIT D**

**EXHIBIT E**  
**SAMPLE INVOICE FORMAT**

A specific invoicing template will be provided to Consultant after award of this PSA, and shall be used for all invoicing on this PSA. The invoice will meet requirements of the JCA, and contain the following elements:

- Item description.
- Item fee.
- % Work Complete for the period.
- Amount invoiced for the period.
- Amount previously invoiced.
- Amount invoiced to date.
- % Work Complete on project.

**END EXHIBIT E**



## EXHIBIT F

### INDEMNIFICATION AND INSURANCE REQUIREMENTS

#### **1. Indemnification**

CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by OWNER) and hold harmless OWNER and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from all acts, errors or omissions to act of CONSULTANT or its officers, agents or employees and for any costs or expenses (including but not limited to attorneys' fees) incurred by OWNER on account of any claim except where such indemnification is prohibited by law.

CONSULTANT's indemnification obligation applies to OWNER's "active" as well as "passive" negligence but does not apply to OWNER's "sole negligence" or "willful misconduct." CONSULTANT shall notify OWNER immediately in the event of any accident or injury arising out of or in connection with this Agreement. This Indemnification provision shall survive any expiration or termination of this Agreement.

**2. Additional Insured** – All policies, except for the Workers' Compensation, shall contain endorsements naming OWNER and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for OWNER to vicarious liability but shall allow coverage for OWNER to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**3. Waiver of Subrogation Rights** – CONSULTANT shall require the carriers of required coverages to waive all rights of subrogation against OWNER, its officers, employees, agents, volunteers, consultants and subconsultants. All general or auto liability insurance coverage provided shall not prohibit CONSULTANT and CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against OWNER.

**4. Policies Primary and Non-Contributory** – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by OWNER.

**5. Severability of Interests** – CONSULTANT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between CONSULTANT and OWNER or between OWNER and any other insured or additional insured under the policy.

**6. Proof of Coverage** – CONSULTANT shall furnish Certificates of Insurance to the OWNER Department administering the Agreement evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONSULTANT shall maintain such

insurance from the time CONSULTANT commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, CONSULTANT shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**7. Acceptability of Insurance Carrier** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.

**8. Deductibles and Self-Insured Retention** – Any and all self-insured retentions of any limit or deductibles exceeding \$10,000 shall be declared to and approved by Risk Management.

**9. Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, OWNER has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by OWNER will be promptly reimbursed by CONSULTANT or OWNER payments to CONSULTANT will be reduced to pay for OWNER purchased insurance.

**10. Insurance Review** – Insurance requirements are subject to periodic review by OWNER. The Program Risk Administrator or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of OWNER. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Program Risk Administrator or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against OWNER, inflation, or any other item reasonably related to OWNER’s risk. Any change requiring additional types of insurance coverage or higher coverage limits shall be made by amendment to this Agreement. CONSULTANT agrees to execute any such amendment within thirty (30) days of receipt.

**11. Insurance Specifications** – CONTRACTOR agrees to provide insurance set forth in accordance with the requirements herein. If CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services. Without in any way affecting the indemnity herein provided and in addition thereto, CONTRACTOR shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

A. Workers’ Compensation/Employers Liability – A program of Workers’ Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer’s Liability with one million dollar (\$1,000,000)

limits covering all persons including volunteers providing services on behalf of CONTRACTOR and all risks to such persons under this Agreement.

If CONTRACTOR has no employees, it may certify or warrant to COUNTY that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the County’s Risk Manager.

With respect to CONTRACTORs that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers’ Compensation insurance.

B. Commercial/General Liability Insurance – CONTRACTOR shall carry General Liability Insurance on an “occurrence” basis, covering all operations performed by or on behalf of CONTRACTOR providing coverage for bodily injury and property damage, including products and completed operations, with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.

C. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If CONTRACTOR owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

D. Umbrella/Excess Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability. An Additional Insured Endorsement shall be provided on the Umbrella policy as it relates to the primary policies requiring an Additional Insured Endorsement.

**END EXHIBIT F**

**EXHIBIT G**

**NOTICES**

1. All notices are deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as follows:

**a. Owner:**

County of Santa Barbara  
Capital Projects Division  
1105 Santa Barbara St. (Historic Courthouse, 2<sup>nd</sup> Floor)  
Santa Barbara, CA 93101

Attention: John Green, Jail Project Manager

**b. Consultant:**

Liebert & Associates, Inc.  
4184 19th. Street  
Boulder, CO 80304  
Attention: Dennis Liebert, Principal

**END EXHIBIT G**

**EXHIBIT H**

**COUNTY OF SANTA BARBARA STAR PROJECT ESTABLISHMENT PACKAGE**

## CONSENT ITEMS

### CONSENT ITEM—11

DEPARTMENT OF CORRECTIONS AND REHABILITATION (5225)  
ADULT LOCAL CRIMINAL JUSTICE PROJECT  
SANTA BARBARA COUNTY

*Authority:* Sections 15820.92 – 15820.926 of the Government Code

**Consider establishing scope, cost, and schedule**

## CONSENT ITEMS

### STAFF ANALYSIS ITEM—11

Department of Corrections and Rehabilitation  
Adult Local Criminal Justice Project  
Santa Barbara County

Action Requested

**If approved, the requested action would establish the project scope, cost, and schedule.**

Scope Description

This project will design and construct an expansion of the existing AB 900 county jail on county-owned land. The expansion will include housing, treatment, and program space and provide approximately 228 beds. The project will be dependent on the adjacent AB 900 Phase II jail facility for several core operational components including food services, laundry, administration, and maintenance.

The housing areas will include double-occupancy and multi-occupancy cells, day rooms, exam rooms, a classroom, and program and visitation space. The project will also include outdoor recreation space, centralized program space, a conference room, and staff support and storage space.

This project will also include, but is not limited to, electrical; plumbing; mechanical; heating, ventilation, and air conditioning; security; fire protection systems; and parking for staff and visitors. In addition, a portion of the facility will be separated by a fence to provide grounds security.

#### Funding and Project Cost Verification

Section 15820.922 of the Government Code (SB 1022) appropriates \$500,000,000 lease revenue bond financing authority to partially finance the design and construction of adult local criminal justice facilities. Award of this funding to individual counties is administered by the Board of State and Community Corrections (BSCC). The BSCC has conditionally awarded \$38,976,000 from this appropriation to Santa Barbara County for this project. All acquisition/study and any design and construction costs in addition to this amount will be paid by the county. This action would allocate \$38,976,000 from this appropriation to complete design and construction of this project.

\$43,435,000	total estimated project cost
\$38,976,000	state costs to be allocated: \$1,487,000 preliminary plans, \$1,287,000 working drawings, \$36,202,000 construction (\$30,394,000 contract, \$2,306,000 contingency, \$577,000 A&E, and \$2,925,000 other project costs)
\$ 4,459,000	local costs to be allocated: \$871,000 acquisition, \$148,000 preliminary plans, \$289,000 working drawings, and \$3,151,000 construction (\$350,000 contract and \$2,801,000 other project costs)

#### CEQA

A Notice of Determination was filed with the Santa Barbara County Clerk on October 3, 2014, and the 30-day statutes of limitation expired on November 2, 2014, without challenge.

#### Real Estate Due Diligence

Real estate due diligence for this project is currently under review and will be completed prior to seeking approval of preliminary plans.

#### Project Schedule

Approve preliminary plans	October 2015
Complete working drawings	August 2016
Start construction	December 2016
Complete construction	October 2018

**Staff Recommendation: Establish scope, cost, and schedule.**

COUNTY OF SANTA BARBARA  
SB1022 JAIL PROJECT  
**PROJECT COST SUMMARY**

PROJECT:	Sheriff's Transition and Re-entry	EST/CURRENT CCCI: 5959/5959
LOCATION:	Santa Maria, CA	DATE ESTIMATED: 8/8/2014
CLIENT:	County Sheriff	ESTIMATED BY: Kitchell CEM
ARCHITECT:	TBD	START OF CONSTRUCTION: 12/29/2016
PROJECT MANAGER:	John Green	CONSTRUCTION COMPLETE: 10/15/2018
DELIVERY:	Design/Bid/Build	DOF PROJ. ID NUMBER: 61.01.841

**DESCRIPTION**

This project will design and construct approximately 52,000 square feet of housing, treatment, programming and reentry space on approximately 6± acres of the greater 50± acres of county owned land. The project will include one new building constructed primarily of steel and concrete for long-term durability. The building will provide housing for transitional, step-down and reentry, and will have co-located resources from the adjacent jail facility. The housing space will include approximately 228 beds designated for treatment, programming and transitional housing and will contain day rooms, classroom, vocational training space and visitation space.

**ESTIMATE SUMMARY**

Offsite Utilities	\$281,278
Foundations	\$988,784
Verticle Structure	\$2,364,628
Floor/Roof Structions	\$1,391,559
Exterior Cladding	\$717,177
Roofing & Waterproofing	\$939,027
Interior Partitions, Doors & Glazing	\$4,374,532
Floor, Wall & Ceiling Finishes	\$1,588,467
Function Equipment & Specialities	\$1,582,571
Stairs & Vertical Transportation	\$192,352
Plumbing Systems	\$2,087,384
Heating Ventilation & Air Conditioning	\$2,466,873
Lighting Power & Communications	\$4,173,590
Fire Protections Systems	\$391,076
Site Paving, Structures & Landscaping	\$411,250
General Site work & Utilities	\$2,500,000
Data/Communications	\$110,304

ESTIMATED TOTAL CURRENT COSTS:	\$26,560,852
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Adjust CCCI from	5959	to	5959	\$0
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ESTIMATED TOTAL CURRENT COSTS ON SEPTEMBER 2014:	\$26,560,852
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Escalation to Start of Construction -	27 months @ .42%/Month:	\$ 3,012,001
Escalation to Mid Point of Construction -	10.5 months @ .42%/Month:	\$ 1,171,334

ESTIMATED TOTAL CONTRACT:	\$30,744,186
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Contingency At:	7.5%	\$2,305,814
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ESTIMATED TOTAL CONSTRUCTION COST:	\$33,050,000
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**SUMMARY OF COSTS BY PHASE**

PROJECT: Sheriff's Transition and Re-entry (STAR)  
 LOCATION: Santa Maria, CA

PRELIMINARY EST: \$43,435,000  
 DATE ESTIMATED: 8/8/2014

BS/FP

CONSTRUCTION DURATION: 21 Months  
 ESTIMATED CONTRACT: \$30,744,186 \$30,744,186  
 CONSTRUCTION CONTINGENCY: \$2,305,814 \$2,305,814  
 TOTAL: \$33,050,000 \$33,050,000 1/1

CATEGORY	ACQUISITION STUDY 00	PRELIMINARY PLANS 01	WORKING DRAWINGS 02	CONSTRUCTION 03	TOTAL
ARCHITECTURAL & ENGINEERING SERVICES					
A&E Design	\$16,000	\$1,041,000	\$838,000	\$577,000	\$2,472,000
Advertising, Printing & Mailing	\$0	\$0	\$0	\$0	\$0
Construction Guarantee Inspection	\$0	\$0	\$0	\$0	\$0
<b>SUBTOTAL A&amp;E SERVICES</b>	<b>\$16,000</b>	<b>\$1,041,000</b>	<b>\$838,000</b>	<b>\$577,000</b>	<b>\$2,472,000</b>

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<b>OTHER PROJECT COSTS</b>					
Fixed Furnishings and Equipment	\$0	\$0	\$0	\$1,281,000	\$1,281,000
Needs assessment	\$8,000	\$0	\$0	\$0	\$8,000
County Administration	\$57,000	\$138,000	\$274,000	\$845,000	\$1,314,000
Contract Construction Management	\$0	\$446,000	\$214,000	\$1,972,000	\$2,632,000
Special Testing and Inspection	\$0	\$0	\$0	\$253,000	\$253,000
Site Acquisition Cost and Fees	\$785,000	\$0	\$0	\$0	\$785,000
Audit	\$0	\$0	\$0	\$20,000	\$20,000
Transition Planning	\$0	\$0	\$0	\$240,000	\$240,000
Utility Connection Fees	\$0	\$0	\$235,000	\$400,000	\$635,000
Environmental CEQA	\$5,000	\$0	\$15,000	\$70,000	\$90,000
State Agency Fee-SFM	\$0	\$5,000	\$0	\$30,000	\$35,000
State Agency Fee-DGS	\$0	\$5,000	\$0	\$11,000	\$16,000
Data/Telephone	\$0	\$0	\$0	\$300,000	\$300,000
Arts Fee	\$0	\$0	\$0	\$304,000	\$304,000
<b>SUBTOTAL OTHER PROJ COSTS</b>	<b>\$855,000</b>	<b>\$594,000</b>	<b>\$738,000</b>	<b>\$5,726,000</b>	<b>\$7,913,000</b>

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8/10

10/13

4/3

2/5

11/12

7/9

9/11

2/5

5/6

6/5

6/8

2/5

2/5

<b>TOTAL ESTIMATED PROJECT COST</b>	<b>\$871,000</b>	<b>\$1,635,000</b>	<b>\$1,576,000</b>	<b>\$39,353,000</b>	<b>\$43,435,000</b>
<b>LESS FUNDS AUTHORIZED</b>	<b>\$871,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$871,000</b>
<b>LESS FUNDS ALLOCATED NOT AUTHORIZED</b>	<b>\$0</b>	<b>\$1,635,000</b>	<b>\$1,576,000</b>	<b>\$39,353,000</b>	<b>\$42,564,000</b>
<b>CARRY OVER</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>BALANCE OF FUNDS REQUIRED</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FUNDING DATA & ESTIMATE NOTES**

PROJECT: Sheriff's Transition and Re-entry (STAR)  
LOCATION: Santa Maria, CA

PRELIMINARY EST: \$ 43,435,000  
DATE ESTIMATED: 8/8/2014

FUNDING DATA

<u>Chapter / Item</u>	<u>Phase</u>	<u>Amount</u>	<u>Totals</u>
<b>Funds Authorized</b>			
Local Funds	A	\$871,000	
<b>Total Funds Authorized</b>			<u>\$871,000</u>
<b>Funds Allocated Not Authorized</b>			
Local Funds	P	\$148,000	
Local Funds	W	\$289,000	
Local Funds	C	\$3,151,000	
Ch. 42/2012	P	\$1,487,000	
Ch. 42/2012	W	\$1,287,000	
Ch. 42/2012	C	\$36,202,000	
<b>Total Funds Allocated Not Authorized</b>			<u>\$42,564,000</u>
<b>Total Funds Authorized and Allocated</b>			<u><u>\$43,435,000</u></u>

ESTIMATE NOTES

1. The construction costs in this estimate are indexed from the CCCI index that is current as of September 2014 to the start of construction. The project estimate is then escalated to the assumed construction midpoint.
2. Advertising, Printing and Mailing Costs are included in the A&E Design costs.

**Santa Barbara County STAR Facility  
SB 1022  
Schedule Milestones**



Milestone	Current Project Schedule
<b>Project Establishment at PWB</b>	Nov 2014
Schematic Design Submittal	1/23/2015
Design Development Submittal	6/1/2015
<b>Approval of Preliminary Plans</b>	10/17/2015
Submit Documents to BSCC SFM CDCR	4/26/2016
<b>DOF Approval / Proceed to Bid</b>	8/29/2016
<b>Advertise for Bids</b>	8/30/2016
<b>Bids Due</b>	10/13/2016
<b>Contract Award by County</b>	11/24/2016
<b>Contract Award Approval - DOF</b>	12/29/2016
<b>Notice to Proceed / Mobilization</b>	1/14/2017
<b>Substantial Completion</b>	10/15/2018
<b>Occupancy</b>	4/12/2019

**Adult Local Criminal Justice Facility Construction Financing Program  
Santa Barbara County**

Line Item	State Reimbursed	County Costs				Total Eligible Project Costs	Total Project Costs
		Cash Match	In-Kind Match	Ineligible Project Costs	Total County Costs		
1. Construction Contract (without Contingency)	\$30,394,186	\$350,000		\$0	\$350,000	\$30,744,186	\$30,744,186
2. Architectural	\$2,456,000	\$16,000		\$0	\$16,000	\$2,472,000	\$2,472,000
2a. Acquisition/Study	78,000	16,000		0	16,000	94,000	94,000
2b. Preliminary Plans	963,000	0		0	0	963,000	963,000
2c. Working Drawings	838,000	0		0	0	838,000	838,000
2d. Construction	577,000	0		0	0	577,000	577,000
3. Project / Construction Management	\$2,632,000	\$0		\$0	\$0	\$2,632,000	\$2,632,000
4. Agency Retained	\$0	\$1,281,000		\$0	\$1,281,000	\$1,281,000	\$1,281,000
5. Other Project Costs	\$1,188,000	\$339,000		\$0	\$339,000	\$1,527,000	\$1,527,000
6. CEQA		\$90,000		\$0	\$90,000	\$90,000	\$90,000
7. Special Consultants		\$0		\$0	\$0	\$0	\$0
8. Real Estate Due Diligence		\$16,000		\$0	\$16,000	\$16,000	\$16,000
9. Audit		\$20,000	\$0	\$0	\$20,000	\$20,000	\$20,000
10. Needs Assessment		\$8,000	\$0	\$0	\$8,000	\$8,000	\$8,000
11. Transition Planning		\$90,000	\$150,000	\$0	\$240,000	\$240,000	\$240,000
12. Site Acquisition (Fair Market Value)			\$785,000		\$785,000	\$785,000	\$785,000
13. County Administration			\$1,314,000	\$0	\$1,314,000	\$1,314,000	\$1,314,000
<b>Subtotals</b>	<b>\$36,670,186</b>	<b>\$2,210,000</b>	<b>\$2,249,000</b>	<b>\$0</b>	<b>\$4,459,000</b>	<b>\$41,129,186</b>	<b>\$41,129,186</b>
<b>Percent of "Total Eligible Project Costs" Subtotal</b>	<b>89.16%</b>	<b>5.37%</b>	<b>5.47%</b>		<b>10.84%</b>	<b>100.00%</b>	
<b>Percent of "Total Project Costs" Subtotal</b>	<b>89.16%</b>	<b>5.37%</b>	<b>5.47%</b>	<b>0.00%</b>	<b>10.84%</b>	<b>100.00%</b>	<b>100.00%</b>
14. Construction Contract Contingency	\$2,305,814	\$0		\$0	\$0	\$2,305,814	\$2,305,814
<b>Totals</b>	<b>\$38,976,000</b>	<b>\$2,210,000</b>	<b>\$2,249,000</b>	<b>\$0</b>	<b>\$4,459,000</b>	<b>\$43,435,000</b>	<b>\$43,435,000</b>
<b>Percent of "Total Eligible Project Costs" Total</b>	<b>89.73%</b>	<b>5.09%</b>	<b>5.18%</b>		<b>10.27%</b>	<b>100.00%</b>	
<b>Percent of "Total Project Costs" Total</b>	<b>89.73%</b>	<b>5.09%</b>	<b>5.18%</b>	<b>0.00%</b>	<b>10.27%</b>	<b>100.00%</b>	<b>100.00%</b>

**Key to County Match Requirements**

• Total County Contribution ≥ 10% of "Total Project Costs" (unless a lower amount has been approved for a small county by the BSCC Board)

• Defined Terms

"Total Project Costs": State reimbursed costs + total county costs (note: includes cash match, in-kind match, and ineligible project costs).

"Total Eligible Project Costs": State reimbursed costs + county cash match + county in-kind match (note: excludes ineligible project costs).

"Small County": Counties with a general population of 200,000 or fewer.

**PROJECT SCOPE SUMMARY**  
**SB 1022 ADULT LOCAL CRIMINAL JUSTICE FACILITY PROJECT**  
**SANTA BARBARA COUNTY**  
**2301 BLACK ROAD, SANTA MARIA, CA 93455**

This project will design and construct an expansion of the existing AB 900 county jail on county-owned land. The expansion will include housing, treatment, and program space and provide approximately 228 beds. The project will be dependent on the adjacent AB900 Phase II jail facility for several core operational components including food services, laundry, administration, and maintenance.

The housing areas will include double occupancy and multi-occupancy cells, day rooms, exam rooms, a classroom, and program and visitation space. The project will also include outdoor recreation space, centralized program space, a conference room, and staff support and storage space.

This project will also include, but is not limited to, electrical; plumbing; mechanical; heating, ventilation, and air conditioning; security; fire protection systems; and parking for staff and visitors. In addition, a portion of the facility will be separated by a fence to provide grounds security.

Approve / Disapprove / Approve with changes

  
\_\_\_\_\_  
Santa Barbara County Authorized Representative

10-21-2014  
\_\_\_\_\_  
Date

LINE ITEM	STATE FUNDS	CASH MATCH	IN-KIND MATCH	TOTAL
1. Construction	\$ 33,000,000	\$ 350,000		\$ 33,350,000
2. Additional Eligible Costs	\$ 888,000	\$ 1,585,000		\$ 2,473,000
3. Architectural	\$ 2,456,000	\$ 16,000		\$ 2,472,000
4. Project/Construction Management	\$ 2,632,000	\$ -		\$ 2,632,000
5. CEQA		\$ 90,000		\$ 90,000
6. State Agency Fees		\$ 51,000		\$ 51,000
7. Audit		\$ 20,000	\$ -	\$ 20,000
8. Needs Assessment		\$ 8,000	\$ -	\$ 8,000
9. Transition Planning		\$ 90,000	\$ 150,000	\$ 240,000
10. County Administration			\$ 1,314,000	\$ 1,314,000
11. Land Value			\$ 785,000	\$ 785,000
<b>TOTAL ELIGIBLE PROJECT COST</b>	<b>\$ 38,976,000</b>	<b>\$ 2,210,000</b>	<b>\$ 2,249,000</b>	<b>\$ 43,435,000</b>
<b>PERCENT OF TOTAL</b>	89.7%	5.1%	5.2%	

**SANTA BARBARA COUNTY SB1022**  
**ACQUISITION STUDY PHASE**

ESTABLISHMENT 11/14/14

**ARCHITECTURAL AND ENGINEERING SERVICES**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
A&E Design	\$ -	\$ 16,000	\$ 16,000
Advertising, Printing & Mailing	\$ -	\$ -	\$ -
Construction Guarantee Inspection	\$ -	\$ -	\$ -
<b>SUBTOTAL A&amp;E SERVICES</b>	<b>\$ -</b>	<b>\$ 16,000</b>	<b>\$ 16,000</b>

**OTHER PROJECT COSTS**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
Fixed Furnishings and Equipment	\$ -	\$ -	\$ -
Needs Assessment	\$ -	\$ 8,000	\$ 8,000
County Administration	\$ -	\$ 57,000	\$ 57,000
Contract Construction Management	\$ -	\$ -	\$ -
Special Testing and Inspection	\$ -	\$ -	\$ -
Site Acquisition Costs and Fees	\$ -	\$ 785,000	\$ 785,000
Audit	\$ -	\$ -	\$ -
Transition Planning	\$ -	\$ -	\$ -
Utility Connection Fees	\$ -	\$ -	\$ -
Environmental CEQA	\$ -	\$ 5,000	\$ 5,000
State Agency Fees-SFM	\$ -	\$ -	\$ -
State Agency Fees-DGS	\$ -	\$ -	\$ -
Data/Telephone	\$ -	\$ -	\$ -
Arts Fee	\$ -	\$ -	\$ -
<b>SUBTOTAL OTHER PROJECT COSTS</b>	<b>\$ -</b>	<b>\$ 855,000</b>	<b>\$ 855,000</b>

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
<b>TOTAL ESTIMATED ACQUISITION PROJECT COST</b>	<b>\$ -</b>	<b>\$ 871,000</b>	<b>\$ 871,000</b>

**SANTA BARBARA COUNTY SB1022**  
**PRELIMINARY PLANS PHASE**

ESTABLISHMENT 11/14/14

**ARCHITECTURAL AND ENGINEERING SERVICES**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
A&E Design	\$ 1,041,000	\$ -	\$ 1,041,000
Advertising, Printing & Mailing	\$ -	\$ -	\$ -
Construction Guarantee Inspection	\$ -	\$ -	\$ -
<b>SUBTOTAL A&amp;E SERVICES</b>	<b>\$ 1,041,000</b>	<b>\$ -</b>	<b>\$ 1,041,000</b>

**OTHER PROJECT COSTS**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
Fixed Furnishings and Equipment	\$ -	\$ -	\$ -
Needs Assessment	\$ -	\$ -	\$ -
County Administration	\$ -	\$ 138,000	\$ 138,000
Contract Construction Management	\$ 446,000	\$ -	\$ 446,000
Special Testing and Inspection	\$ -	\$ -	\$ -
Site Acquisition Costs and Fees	\$ -	\$ -	\$ -
Audit	\$ -	\$ -	\$ -
Transition Planning	\$ -	\$ -	\$ -
Utility Connection Fees	\$ -	\$ -	\$ -
Environmental CEQA	\$ -	\$ -	\$ -
State Agency Fees-SFM	\$ -	\$ 5,000	\$ 5,000
State Agency Fees-DGS	\$ -	\$ 5,000	\$ 5,000
Data/Telephone	\$ -	\$ -	\$ -
Arts Fee	\$ -	\$ -	\$ -
<b>SUBTOTAL OTHER PROJECT COSTS</b>	<b>\$ 446,000</b>	<b>\$ 148,000</b>	<b>\$ 594,000</b>

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
<b>TOTAL ESTIMATED PRELIMINARY PLANS PROJECT COST</b>	<b>\$ 1,487,000</b>	<b>\$ 148,000</b>	<b>\$ 1,635,000</b>



**SANTA BARBARA COUNTY SB1022**  
**WORKING DRAWINGS PHASE**

ESTABLISHMENT 11/14/14

**ARCHITECTURAL AND ENGINEERING SERVICES**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
A&E Design	\$ 838,000	\$ -	\$ 838,000
Advertising, Printing & Mailing	\$ -	\$ -	\$ -
Construction Guarantee Inspection	\$ -	\$ -	\$ -
<b>SUBTOTAL A&amp;E SERVICES</b>	<b>\$ 838,000</b>	<b>\$ -</b>	<b>\$ 838,000</b>

**OTHER PROJECT COSTS**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
Fixed Furnishings and Equipment	\$ -	\$ -	\$ -
Needs Assessment	\$ -	\$ -	\$ -
County Administration	\$ -	\$ 274,000	\$ 274,000
Contract Construction Management	\$ 214,000	\$ -	\$ 214,000
Special Testing and Inspection	\$ -	\$ -	\$ -
Site Acquisition Costs and Fees	\$ -	\$ -	\$ -
Audit	\$ -	\$ -	\$ -
Transition Planning	\$ -	\$ -	\$ -
Utility Connection Fees	\$ 235,000	\$ -	\$ 235,000
Environmental CEQA	\$ -	\$ 15,000	\$ 15,000
State Agency Fees-SFM	\$ -	\$ -	\$ -
State Agency Fees-DGS	\$ -	\$ -	\$ -
Data/Telephone	\$ -	\$ -	\$ -
Arts Fee	\$ -	\$ -	\$ -
<b>SUBTOTAL OTHER PROJECT COSTS</b>	<b>\$ 449,000</b>	<b>\$ 289,000</b>	<b>\$ 738,000</b>

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
<b>TOTAL ESTIMATED WORKING DRAWINGS COST</b>	<b>\$ 1,287,000</b>	<b>\$ 289,000</b>	<b>\$ 1,576,000</b>

**SANTA BARBARA COUNTY SB1022**  
**CONSTRUCTION PHASE**

ESTABLISHMENT 11/14/14

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
<b>ESTIMATED CONTRACT COST</b>	\$ 30,394,186	\$ 350,000	\$ 30,744,186
<b>CONSTRUCTION CONTINGENCY</b>	\$ 2,305,814	\$ -	\$ 2,305,814
<b>SUBTOTAL CONSTRUCTION</b>	<u>\$ 32,700,000</u>	<u>\$ 350,000</u>	<u>\$ 33,050,000</u>

**ARCHITECTURAL AND ENGINEERING SERVICES**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
A&E Design	\$ 577,000	\$ -	\$ 577,000
Advertising, Printing & Mailing	\$ -	\$ -	\$ -
Construction Guarantee Inspection	\$ -	\$ -	\$ -
<b>SUBTOTAL A&amp;E SERVICES</b>	<u>\$ 577,000</u>	<u>\$ -</u>	<u>\$ 577,000</u>

**OTHER PROJECT COSTS**

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
Fixed Furnishings and Equipment	\$ -	\$ 1,281,000	\$ 1,281,000
Needs Assessment	\$ -	\$ -	\$ -
County Administration	\$ -	\$ 845,000	\$ 845,000
Contract Construction Management	\$ 1,972,000	\$ -	\$ 1,972,000
Special Testing and Inspection	\$ 253,000	\$ -	\$ 253,000
Site Acquisition Costs and Fees	\$ -	\$ -	\$ -
Audit	\$ -	\$ 20,000	\$ 20,000
Transition Planning	\$ -	\$ 240,000	\$ 240,000
Utility Connection Fees	\$ 400,000	\$ -	\$ 400,000
Environmental CEQA	\$ -	\$ 70,000	\$ 70,000
State Agency Fees-SFM	\$ -	\$ 30,000	\$ 30,000
State Agency Fees-DGS	\$ -	\$ 11,000	\$ 11,000
Data/Telephone	\$ 300,000	\$ -	\$ 300,000
Arts Fee	\$ -	\$ 304,000	\$ 304,000
<b>SUBTOTAL OTHER PROJECT COSTS</b>	<u>\$ 2,925,000</u>	<u>\$ 2,801,000</u>	<u>\$ 5,726,000</u>

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>	<u>\$ 36,202,000</u>	<u>\$ 3,151,000</u>	<u>\$ 39,353,000</u>

	<b>STATE</b>	<b>LOCAL</b>	<b>TOTAL</b>
<b>TOTAL ESTIMATED PROJECT COST</b>	<u>\$ 38,976,000</u>	<u>\$ 4,459,000</u>	<u>\$ 43,435,000</u>

**END EXHIBIT H**

**EXHIBIT I**

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

**STATE OF CALIFORNIA**

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

**FOR** \_\_\_\_\_

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

**RECITALS**

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

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

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

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

to issue bonds for the Project.

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

#### ARTICLE 1. TERM AND TERMINATION

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

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

C. Termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 2. PROJECT OFFICIALS

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

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

County Construction Administrator: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
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.

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

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

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

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

D. Precedence. In the event of any inconsistency in the Project Documents, except as otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1) PDCA; 2) the Ground Lease (as defined in the PDCA); 3) this Agreement including the BSCC Jail Construction Agreement Standard Conditions attached hereto as Exhibit A; 4) the Right of Entry for Construction and Operation (as defined in the PDCA); 5) Participating County’s Project Proposal; 6) Participating County Project Description Detail and Budget; and 7) the Participating County’s proposal(s), modification(s), and submittals. In the event the Bonds are issued, any inconsistency between the Project Documents and the Bond Documents shall be resolved by giving precedence to the Bond Documents. To the extent the Parties mutually agree that a provision of a particular document should control with respect to an

inconsistency between that document and another document or documents, notwithstanding the other provisions of this Section, such provision shall control.

#### ARTICLE 4. PARTICIPATING COUNTY OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 5. SUBSTANTIAL CHANGES.

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

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

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

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

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

#### ARTICLE 6. PROJECT FUNDING

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

B. State Financing Obligations.

1. In no event or circumstance shall the State or Agencies be obligated to pay the Participating County under this Agreement or any other Project Document any amount in excess of the Maximum State Financing. Participating County waives any and all claims against the Agencies or the State of California for any costs which exceed the Maximum State Financing. The Participating County is solely responsible for any and all cost, expenses or fees

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

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

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

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

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

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

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

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

#### ARTICLE 7. ADMINISTRATIVE OVERSIGHT BY BOARD

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

#### ARTICLE 8. PERFORMANCE AND PAYMENT BONDS

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

#### ARTICLE 9. INDEMNITY

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

#### ARTICLE 10. DISPUTES

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

#### ARTICLE 11. GENERAL TERMS AND CONDITIONS

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

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

#### ARTICLE 12. COUNTERPARTS

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

**[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]**

FORM OF DOCUMENT

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

BOARD OF STATE AND COMMUNITY CORRECTIONS

By: \_\_\_\_\_  
Signature of Executive Director or Designee

Name and Title: \_\_\_\_\_  
Date: \_\_\_\_\_

“PARTICIPATING COUNTY”

County of:

By: \_\_\_\_\_  
Signature

Name and Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FORM OF DOCUMENT



## EXHIBIT A

### CONSTRUCTION AGREEMENT STANDARD CONDITIONS

#### ARTICLE 1. TOTAL ELIGIBLE PROJECT COSTS

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

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

B. Participating County must provide a minimum of at least \_\_\_\_\_ 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

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

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

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

## ARTICLE 2. PARTICIPATING COUNTY'S GENERAL RESPONSIBILITY

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

## ARTICLE 3. PARTICIPATING COUNTY ASSURANCES AND COMMITMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE 4. PROJECT ACCESS

To the extent not inconsistent with the Bond Documents, as that term is defined in Article 1 Section 1.1(a) of the PDCA, at all times during construction of the Project and after final completion, the Participating County shall provide to employees, subcontractors, and consultants of the Agencies reasonable unrestricted access to observe, monitor and inspect the Project. The Agencies' access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to design or construction of the Project.

#### ARTICLE 5. RECORDS

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

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

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

Participating County shall maintain all records for the period set forth in the PDCA (“**Record Maintenance Period**”). Participating County agrees to protect records adequately from fire or other damage. When records are stored away from the Participating County’s principal office, a written index of the location of records stored must be on hand and ready access must be assured. All Participating County records shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the BSCC or designees, the Agencies, and by state government auditors or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the Record Maintenance Period, the records must be retained until the completion of the action and resolution of all issues which arise from it or until the end of the Record Maintenance Period, whichever is later.

## ARTICLE 6. ACCOUNTING AND AUDIT REQUIREMENTS

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

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

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

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

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

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

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

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

## ARTICLE 7. REPORTS

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

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

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

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





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

#### ARTICLE 8. WITHHOLDING OF STATE DISBURSEMENTS

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

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

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

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

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

#### ARTICLE 9. DISBURSEMENT

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

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

#### ARTICLE 10. DISPUTES

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

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

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

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

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

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

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

#### ARTICLE 11. REMEDIES

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

#### ARTICLE 12. WAIVER

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

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.

**END EXHIBIT I**

**EXHIBIT J**

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION SAMPLE  
PROJECT CONSTRUCTION AND DELIVERY AGREEMENT**

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

by and among

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

and

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

and]

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

and

**[ENTER COUNTY NAME]**

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

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

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FORM OPEN DOCUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

interim financing costs associated with the Interim Loan.

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

## ARTICLE 1

### GENERAL

#### 1.1 General Covenants, Acknowledgements and Agreements of the Parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The sale of the Bonds.

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

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

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

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

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

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

1.5 Representations and Warranties of the Participating County.

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

hereby and to perform its obligations hereunder.

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

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

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

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

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

#### 1.6 Representations and Warranties of the Board.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

1.10 Indemnity. As required by Section [ENTER SECTION] of the California Government Code, the Participating County hereby agrees to indemnify, defend and save harmless the State, including but not limited to the Board[, the Department] and the BSCC, and each of their respective officers, governing members, directors, officials, employees, subcontractors, consultants, and agents (collectively, “Indemnitees”) for any and all claims and losses arising at any time out of the acquisition, design, construction, operation, maintenance, use and occupancy of the Project. The Participating County shall not be obligated to provide indemnity or defense where the claim arises out of the 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 [ENTER “Department” OR “BSCC”] hereby covenant and agree that none of the Ground Lease, the Facility Lease or the Facility Sublease nor any interest of such Parties thereunder shall be sold, mortgaged, pledged, assigned, or transferred by the Parties thereto by voluntary act or by operation of law or otherwise; provided, however, that the Facility may be subleased in whole or in part by the Participating County with the prior written consent of the [ENTER “Department” OR “BSCC”] and the Board to the form and substance of such sublease, which consent shall not be unreasonably withheld, and, provided further that, any such sublease shall be subject to the following conditions:

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

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

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

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

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

## ARTICLE 2

### TERM AND TERMINATION OF AGREEMENT

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

#### 2.2 Termination of Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 3

### COST SHARING OF THE PROJECT

#### 3.1 Financing Eligibility of the Project.

(a) *General.* Subject to the terms and provisions hereof, the costs for design and construction of the Project shall be shared by the State and the Participating County with the State providing financing up to a maximum of \_\_\_\_\_ 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 [ENTER PROGRAM NAME] Financing Program. Any modifications to the source or sources of the Cash (hard) Match or the associated security and terms related thereto as described in **Exhibit E-1** must be approved by the Agencies. The Participating County shall ensure that all Cash (hard) Match is encumbered prior to Finance approval of proceeding to bid the Construction Contract (as hereinafter defined).

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

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

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

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

#### ARTICLE 4

##### PROJECT SCOPE, COST AND SCHEDULE

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

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

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

## Exhibit A.

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

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

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

## ARTICLE 5

### BIDDING AND CONSTRUCTION PHASE OF THE PROJECT

5.1 Construction Covenant of the Participating County. The Participating County acting as agent of the Board and the [ENTER “Department” OR “BSCC”], hereby covenants and agrees to provide and perform or cause to be performed all activities required to acquire, design and construct the Project on behalf of the Board in accordance with the Participating County’s established policies and procedures for the 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 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 Board[, the Department,] and the BSCC and their respective officers, agents and employees shall be included as additional insured in all insurance required herein.

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

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

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



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

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

## ARTICLE 6

### CERTAIN OBLIGATIONS POST PROJECT COMPLETION

#### 6.1 Private Use of the Project.

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

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

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

## ARTICLE 7

### RECORD RETENTION

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

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

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

## ARTICLE 8

### MISCELLANEOUS

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

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

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

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

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

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

hereby.

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

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

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

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

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

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

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

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

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

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

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

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

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

**[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]**

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

STATE PUBLIC WORKS BOARD OF  
THE STATE OF CALIFORNIA

By: \_\_\_\_\_  
[Name]  
[Executive Director or Deputy Director]

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

By: \_\_\_\_\_  
[Name]  
[Title]

BOARD OF STATE AND COMMUNITY  
CORRECTIONS OF THE STATE OF  
CALIFORNIA

By: \_\_\_\_\_  
[Name]  
[Title]

COUNTY OF [COUNTY NAME]

By: \_\_\_\_\_  
[Name]  
[Title]

FORM OF DOCUMENT

**EXHIBIT A**

**PROJECT SCOPE, COST AND SCHEDULE DESCRIPTION**

**[Include narrative description of Project per Section 4.1]**

FORM OF DOCUMENT

**EXHIBIT B**

**FORM OF GROUND LEASE**

FORM OF DOCUMENT

**EXHIBIT C**

**FORM OF RIGHT OF ENTRY FOR CONSTRUCTION AND OPERATION**

FORM OF DOCUMENT



**EXHIBIT D**

**FORM OF FACILITY SUBLEASE**

FORM OF DOCUMENT

**EXHIBIT E-1**

**DESCRIPTION OF PARTICIPATING COUNTY FUNDING**

**Cash (hard) Match**

FORM OF DOCUMENT

**EXHIBIT E-2**

**DESCRIPTION OF PARTICIPATING COUNTY FUNDING**

**In-kind (soft) Match**

FORM OF DOCUMENT

**END EXHIBIT J**