

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

**RIGHT OF ENTRY FOR
CONSTRUCTION AND OPERATION**

This RIGHT OF ENTRY FOR CONSTRUCTION AND OPERATION AGREEMENT (this “License”) is entered into as of _____, 20__, by and between the DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA (the “Department”), an entity of state government of the State of California (the “State”), as licensor, and the COUNTY OF _____, as licensee (the “Participating County”). The Department and the Participating County are sometimes individually referred to as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, pursuant to Chapter 3.12 of Part 10b of Division 3 of Title 2 of the California Government Code, the State Public Works Board (the “Board”) is authorized to finance the acquisition, design and construction of a jail facility approved by the Board of State and Community Corrections (the “BSCC”) pursuant to Section 15820.916 of the California Government Code (the “AB 900 Jail Financing Program”); and

WHEREAS, the Participating County has proposed to build a jail facility, the _____ project (the “Project”), to be located at _____, real property controlled by the Participating County through fee-simple ownership (the “Site”); and

WHEREAS, contemporaneous with entry into this License, Participating County intends to lease the Site to the Department pursuant to a Ground Lease executed by and between the Participating County and the Department and consented to by the Board (the “Ground Lease”); and

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

WITNESSETH

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

1. Grant of License – The Department hereby grants to the Participating County, its employees, consultants, representatives and contractors a non-exclusive, temporary license to enter the Site for site analysis, Project construction-related activities, and for operation of the Project upon substantial completion of

- construction (“Activities”), all as contemplated by that certain Project Delivery and Construction Agreement by and among the Department, the Board, the BSCC and the Participating County (the “PDCA”). This License is subordinate to all prior or future rights and obligations of the Department and the Board in the Site, except that the Department and the Board shall grant no rights inconsistent with the reasonable exercise by the Participating County of its rights under this License.
2. License Term – This License shall commence on the Effective Date of the Ground Lease and shall terminate on the date of termination of the PDCA (the “Term”).
 3. Compliance with Laws – The Participating County shall conduct all Activities in compliance with all Federal, State and municipal statutes and ordinances, and with all regulations, orders and directives of appropriate governmental agencies (“Laws and Regulations”), as such Laws and Regulations exist during the Term of this License.
 4. Inspections – The Department, the Board, and their representatives, employees, agents or independent contractors may enter and inspect the Site or any portion thereof or any improvements thereon, and the Project at any time and from time to time at reasonable times to verify the Participating County’s compliance with the terms and conditions of this License.
 5. Special Condition – In the performance of the required studies and tests, the Participating County acknowledges that the Participating County will practice all due diligence to protect the property.
 6. Cooperation – In the event the Department or the Board has business on the Site or the Project, the Participating County agrees to coordinate the Activities with the Department or the Board to minimize any impairment of access to the Site or the Project and any inconvenience to or disruption of the Department’s or the Board’s business. Department and Board agree to coordinate their business at the Site or the Project so as to minimize any delay or disruption of the Participating County’s Activities.
 7. Indemnity – As required by California Government Code Section 15820.915 the Participating County hereby agrees that it shall indemnify, defend and save harmless the State, including but not limited to the Board, CDCR and BSCC, and each of their respective officers, governing members, directors, officials, employees, subcontractors, consultants, and agents (collectively, “Indemnitees”) for any and all claims and losses arising out of the acquisition, design, construction, and operation of the Project, including, but not limited to all demands, causes of actions and liabilities of every kind and nature whatsoever arising out of, related to, or in connection with (a) any breach of this License by the Participating County; (b) operation, maintenance, use and occupancy of the Project; (c) any acts or omissions of any contractor hired by the Participating County or its agents or subcontractor hired by such contractor; and (d) personal injury, bodily injury or property damage resulting from the Activities of the Participating County, its employees, consultants, representatives and contractors (collectively, “Claims”). The Participating County’s obligation to indemnify,

defend and save harmless the Indemnitees shall extend to all Claims arising, occurring, alleged, or made at any time, including prior to, during, or after the period that this License is in full force and effect. The Participating County's obligation to indemnify, defend, and save harmless the Indemnitees shall apply regardless of any active and/or passive negligent act or omission of the Indemnitees, but the Participating County shall not be obligated to provide indemnity or defense for an Indemnatee wherein the claim arises out of the gross negligence or willful misconduct of the Indemnatee. The indemnification obligations of the Participating County set forth in this Section shall survive any termination of this License.

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

14. Notices –

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

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

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

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

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

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

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

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

THE COUNTY OF _____

By: _____
Name:
Title:

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

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

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

By: _____
Name: Stephen Benson
Title: Deputy Director

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

By: _____
Name:
Title: