

Facility #09-A-01;
Building Name: Main Street;
Building Address: 495 Main Street, Placerville, CA 95667

PRINT DATE: August 4, 2008

**TRANSFER AGREEMENT
BETWEEN THE JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS,
AND THE COUNTY OF EL DORADO
FOR THE TRANSFER OF RESPONSIBILITY FOR COURT FACILITY**

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TRANSFER AGREEMENT

1. PURPOSE

The Judicial Council of California (“**Council**”), Administrative Office of the Courts (together, the “**AOC**”), and the County of El Dorado (“**County**”), set forth the terms and conditions for the transfer of responsibility for funding and operation of the trial court facility commonly known as the Main Street Courthouse, located at 495 Main Street, Placerville, California, and for the conveyance to the State of California on behalf of the Council of the County’s title in and to the Real Property.

2. BACKGROUND

The Lockyer-Isenberg Trial Court Funding Act of 1997, AB 233 (Escutia and Pringle) provides for transfer of the primary obligation for funding of court operations from the counties to the State. The restructuring of funding for trial court operations accomplished by the Lockyer-Isenberg Trial Court Funding Act of 1997 ended a dual system of county and state funding of, and created a more stable and consistent funding source for, trial court operations. The Trial Court Facilities Act of 2002 was adopted to provide for the transfer of responsibility for funding and operation of trial court facilities from the counties to the AOC. The Parties enter into this Agreement to implement the provisions of the Act as it exists on the Effective Date.

3. DEFINITIONS

“**Acceptance Document**” means a certificate of acceptance or certified resolution evidencing the PWB’s approval of the Transfer of Title.

“**Act**” means the Trial Court Facilities Act of 2002 (including Government Code sections 70301-70404) as of the Effective Date.

“**Agreement**” means this Transfer Agreement, together with the attached Exhibits.

“**AOC Authorized Signatory**” means the AOC’s Senior Manager, Business Services, Grant Walker.

“**AOC Claim**” means any demand, complaint, cause of action, or claim related to the period on and after the Effective Date, alleging or arising from acts, errors, omissions, or negligence of the Court in the administration and performance of judicial operations in the Court Facility (e.g., allegations of civil rights violations made by a third party against a Court employee).

“**Appraiser**” means an MAI appraiser with at least five years experience in appraising real properties similar to the Real Property.

[“**Approved Service Contracts**” means the Service Contracts that the AOC wishes to accept or otherwise continue in effect as indicated on **Exhibit “K”**.]

[“**Assigned Intangible Personal Property**” means the Intangible Personal Property to be assigned by the County to the AOC as identified in **Exhibit “D.”**]

[“**Assignment of Intangibles**” means the document titled Assignment of Intangible Personal Property, Rights, and Contracts that is similar in form and content to the document attached to this Agreement as **Exhibit “D”** and by which the County will assign to the AOC the Assigned Intangible Personal Property.]

“**Building**” means the building on the Land occupied by the Court and all connected or related structures and improvements and all Building Equipment.

“**Building Equipment**” means all installed equipment and systems that serve the Building, and the Building Software.

“**Building Software**” means any software program that is licensed to the County for the operation of any part of the Building.

“**Certificate**” means the document titled Datedown Certificate that is similar to the document attached to this Agreement as **Exhibit “L”**.

“**Closing Date**” means the TOR Closing Date or the TOT Closing Date, as applicable.

“**Closing Documents**” means together, the TOR Closing Documents and the TOT Closing Documents.

“**Contractors**” means all third-party contractors, vendors, service providers, and all levels of subcontractors, and their respective employees, consultants, and representatives, that provide goods, services, or supplies to the Real Property.

“**Controller**” means the State Controller.

“**County Authorized Signatory**” means the Chair of the County’s Board of Supervisors.

“**County Authorizing Document**” means a certified copy of a resolution evidencing that the County has taken all steps and obtained all approvals required to: (1) authorize the County Authorized Signatory to execute this Agreement and the Closing

Documents on behalf of the County; and (2) authorize the County to perform its obligations under this Agreement and the Closing Documents.

“**County Facilities Payment**” means the payments the County must make to the Controller with respect to the Court Facility under Article 5 of the Act.

“**County Parties**” means the County and its officers, agents, and employees.

“**Court**” means the Superior Court of California for the County of El Dorado.

“**Court Facility**” means the 18,560 square foot trial court facility commonly known as the Main Street courthouse, located at 495 Main Street, Placerville, California 95667, which occupies the entirety of the Building, which includes all spaces, fixtures, and appurtenances described in section 70301(d) of the Act, including the Court Parking, 4 rooms for holding superior court, 3 chambers for judges of the Court, 1 walk-up window, rooms for attendants of the Court, , rooms for storage, and certain other areas required or used for Court functions, together with the right to enter, exit, pass over, and pass through the Land as necessary to access the Court Facility. A copy of a site plan depicting the location of the Building on the Land and a floor plan depicting the layout of the Court Facility in the Building, are attached as **Exhibits “F”** and **“G”** to this Agreement.

“**Court Parking**” means a total of 114 parking spaces, comprised of 27 surface parking spaces on the Land, 82 reserved parking spaces on the top floor of a nearby city parking structure located near Center Street between Highway 50 and Main Street, and 5 surface reserved parking spaces leased to the Court by the Round Table business located at 512 Main Street, for use by judges, Court staff and employees, and jurors, all as shown on the parking plan attached as **Exhibit “H”**, which the County and the Court have agreed is parking of the same number, type, and convenience as made available for users of the Court on October 1, 2001 pursuant to section 70330 of the Act.

“**Deficiency**” means any condition of, damage to, or defect in the Building that: (1) significantly threatens the life, health, or safety of persons occupying or visiting the Building, (2) unreasonably interferes with, disrupts, or prevents the Court’s occupancy or use of the Real Property, or its ability to conduct its business operations in the Building, in an orderly, neat, clean, safe, and functional environment, (3) threatens the security of the employees, guests, invitees, or patrons of the Court, (4) threatens to diminish the value of the Building, or threatens to damage or destroy the business personal property of the Court located in the Building, (5) threatens the preservation of the Court’s files, records, and documents located in the Building, or (6) causes or exacerbates an unsafe, unsanitary, unlawful, or non-functional condition affecting the Building.

“**Dispute**” means each and every pending or threatened claim, liability, litigation, arbitration, mediation, administrative proceeding, settlement negotiation, or other dispute-resolution proceeding related to the Property. An accurate and complete list of all Disputes as of the Effective Date is set forth in **Exhibit “I”**.

“**Effective Date**” means the date on which this Agreement is signed by the last of the Parties to sign.

“**Environmental Law**” means federal, state, or local laws, ordinances, regulations, rules, statutes, and administrative actions or orders respecting hazardous or toxic substances, waste, or materials.

“**Equipment Permits**” means any federal, state, or local governmental permits, certificates, and approvals required for lawful operation of any Building Equipment.

“**Equity**” means the term “equity” as used and referred to in the Act.

“**Grant Deed**” means the document titled Grant Deed that is similar to the document attached to this Agreement as **Exhibit “C”** and by which the County will convey to the State on behalf of the Council title to the Real Property.

“**Hazardous Substance**” means any material or substance regulated under any Environmental Law.

“**Intangible Personal Property**” means all of the County’s : (1) Building Software and agreements or arrangements for the operation of the Building Equipment on the Real Property; (2) warranties, permits, licenses, certificates, guaranties, and suretyship agreements and arrangements, and indemnification rights in favor of the County to the extent related to the Real Property; (3) commitments, deposits, and rights for Utilities to the extent related to the Real Property; (4) engineering, accounting, title, and other technical or business data concerning the Real Property or the Tangible Personal Property; (5) deposits, deposit accounts, and escrow accounts arising from or related to any transactions to the extent related to the Real Property or the Tangible Personal Property, and rights to receive refunds or rebates of impact fees, assessments, charges, premiums, or other payments made by the County to the extent that these refunds or rebates relate to the Real Property and the period on or after the TOR Closing Date; or (6) all other intangible rights, interests, and claims of the County which are a part of and to the extent related to the Real Property or the Tangible Personal Property.

“**Interim Period**” means the period of time commencing on the TOR Closing Date and ending on the TOT Closing Date.

“**Land**” means the real property described on **Exhibit “A,”** including (1) rights to enter and exit the Land, (2) recorded and unrecorded rights to water, water stock, oil, gas, minerals, and timber related to the Land, and (3) existing, granted development permits, entitlements, and air and view rights.

“**Law**” means State and federal codes, ordinances, laws, regulations, the California Rules of Court, and judicial and administrative orders and directives to the extent binding on the County and issued by a court or governmental entity with jurisdiction over the County.

“**Liability Claim**” means any demand, complaint, cause of action, or claim, excluding AOC Claims, alleging (1) bodily injury to or death of third parties (excluding any employees of State Parties or County Parties acting within the scope of their employment as such) in, on, or about the Real Property, and (2) damage to or destruction of personal property of a third party (other than personal property of a County Party or a State Party) in, on, or about the Real Property.

“**Material Agreements**” means any and all agreements, contracts, or understandings (whether written or unwritten) relating to the Property (1) for which termination requires advance notice by a period exceeding 30 calendar days, or (2) that obligate the County to make payment, or entitle the County to receive payment, exceeding \$25,000 within any fiscal year.

“**Memorandum**” means the document titled Memorandum of Transfer Agreement that is similar in form and content to the document attached to this Agreement as **Exhibit “M”**.

“**Occupancy Agreement**” means any agreement or arrangement between a Party and a third party that entitles a third party other than a County Party or a State Party to occupy or use the Real Property for a period that continues after the TOR Closing Date, and that cannot be terminated on 30 or fewer days notice.

“**Occupant**” means any third party that occupies, possesses, or uses the Real Property under an Occupancy Agreement.

“**Party**” means either of the AOC or the County, and “**Parties**” means the AOC and the County.

“**Pending Projects**” means any pending maintenance project or other project involving the Court Facility under sections 70326(d) or 70331(c) of the Act, including the County’s project for repair of the terra cotta cornice of the Building.

“Personal Property” means the Assigned Intangible Personal Property, if any, together with the Tangible Personal Property.

“Property” means all right, title, and interest in and to the Real Property and the Personal Property.

“Property Claim” means any claim or demand arising from or related to direct, physical loss or damage to the Real Property that is required to be covered by the Property Insurance Policies.

“Property Disclosure Documents” means all documents including Material Agreements that pertain to the title, ownership, use, occupancy, or condition of the Property or any rights, benefits, liabilities, obligations, or risks associated with the Property. A list of the categories of Property Disclosure Documents is attached as **Exhibit “J”**.

“Property Insurance Costs” means all costs of providing the Property Insurance Policies, including premiums, deductibles, and self-insurance retention amounts under the County’s self-insurance program.

“Property Insurance Policies” means one or more policies of property insurance maintained by the County during the Interim Period that insure the Real Property against those risks covered under a form of coverage with terms and conditions as comprehensive as those in an All-Risk/Special Form property insurance policy and, when applicable, the comprehensive form of equipment breakdown insurance, with coverage amounts equal to at least the 100% Replacement Cost of the Real Property. The County’s obligation to provide the Property Insurance Policies may be satisfied, in whole or in part, by any self-insurance maintained by the County for the Real Property, or by the County’s participation in a joint powers authority established for the purpose of pooling self-insured claims.

“Property Loss” means any direct, physical loss of, damage to, or destruction of, the Real Property during the Interim Period that arises from a cause that is required to be covered under the terms of the Property Insurance Policies.

“PWB” means the State Public Works Board.

“Real Property” means, together, the Land and the Building.

“Security Services MOU” means the Memorandum of Understanding Between the El Dorado County Superior Court and the El Dorado County Sheriff’s Department for FY 2007-2008 dated February 27, 2008, as amended from time to time, or a successor

memorandum executed by the El Dorado County Superior Court and the El Dorado County Sheriff's Department.

“Service Contracts” means all contracts between the County and any third parties under which goods or services are provided to the Real Property, including the Approved Service Contracts.

“State” means the State of California.

“State Parties” means the Council, the Administrative Office of the Courts, and the Court, their respective officers, agents, and employees.

“Tangible Personal Property” means any unaffixed item that is, on the TOR Closing Date, owned by the County and located on or in, and used in or necessary to the use, occupancy, or operation of, the Real Property. [The term **“Tangible Personal Property”** does not include any of the **“Excluded Tangible Personal Property”** listed on **Exhibit “B”** attached to this Agreement.]

“Telecommunications MOU” means the Memorandum of Agreement between the County and the Court dated June 15, 2004, as amended, renewed or replaced from time to time.

“Termination” means the document titled Termination of Memorandum that is similar in form and content to the document attached to this Agreement as **Exhibit “N”** and that will be recorded after the Transfer of Title to terminate the Memorandum.

“TOR Closing” means the completion of all steps required to complete the Transfer of Responsibility under this Agreement and the TOR Closing Documents.

“TOR Closing Date” means the later to occur of: (1) the date on which this Agreement and the TOR Closing Documents are signed by the last of the Parties to sign them, and (2) the date on which the County Facilities Payment has been approved by the State Department of Finance, as more specifically provided in section 6.1.1, below. The TOR Closing Date will be the same as the Effective Date if this Agreement and the TOR Closing Documents are signed on the same day.

“TOR Closing Documents” means the documents listed in section 5.1.1 of this Agreement.

“TOT Closing” means the completion of all steps required to complete the Transfer of Title under this Agreement and the TOT Closing Documents.

“TOT Closing Date” means the date that the Grant Deed is recorded in the County Recorder's Office.

“**TOT Closing Documents**” means the documents listed in section 5.2.1 of this Agreement.

“**Transfer**” means the Transfer of Responsibility or the Transfer of Title, as determined by the context, and “**Transfers**” means the Transfer of Responsibility and the Transfer of Title, together.

“**Transfer of Responsibility**” means the County’s full and final grant, transfer, absolute assignment, and conveyance to the applicable State Parties, and the State Parties’ full and final acceptance and assumption of, entitlement to, and responsibility for, all of the County’s rights, duties, and liabilities arising from or related to the Court Facility under this Agreement, the TOR Closing Documents, and the Act, except for those duties and liabilities expressly retained by the County under this Agreement and the Act, and Disputes that commenced before the TOR Closing Date. The term Transfer of Responsibility does not include the Transfer of Title.

“**Transfer of Title**” means the County’s full and final grant and conveyance to the State on behalf of the Council of all of the County’s right, title, and interest in and to the Real Property under this Agreement, the TOT Closing Documents, and the Act, on the express condition that the Real Property is to be used entirely as “court facilities” within the meaning of section 70301(d) of the Trial Court Facilities Act of 2002 (including Government Code sections 70301-70404) as of September 30, 2008, and is to be forever held and used as such, and upon ceasing to be used as court facilities, the real property shall revert to the County.

“**Utilities**” means all of the utilities provided to the Real Property, except for telecommunications services provided by third parties.

4. RESPONSIBILITIES AFTER TRANSFER.

4.1 Transfer of Responsibility; Transfer of Title. On the TOR Closing Date, the Transfer of Responsibility for the Court Facility from the County to the AOC will occur under this Agreement and the TOR Closing Documents. On the TOT Closing Date, the Transfer of Title will occur under this Agreement and the TOT Closing Documents. The Parties agree that the TOT Closing Date will not occur until the County has completed its Pending Project for repair of the terra cotta cornice of the Building.

4.2 General Responsibilities After Transfer. Upon the completion of each Transfer, the Parties will have the general rights, duties, and liabilities set forth in the Act in respect of the Real Property, except as expressly delegated by the Parties in this Agreement, the applicable Closing Documents, or any other agreement.

4.3 Specific Responsibilities After the TOR Closing Date. The Parties will have the following specific rights, duties, and liabilities upon and after the TOR Closing Date:

4.3.1 Utilities. If not completed before the TOR Closing Date, the Parties will work together, diligently and in good faith, to cause the County's accounts with all providers of Utilities to be closed as of the TOR Closing Date and new Utilities accounts to be opened in the name of the AOC. The Parties will comply with the Telecommunications MOU with respect to payment of fees and charges of third party telecommunications providers incurred on and after the TOR Closing Date. The County will send to the AOC all invoices and other communications related to Utilities provided to the Real Property on and after the TOR Closing Date. The County is solely responsible for all Utilities costs and expenses incurred prior to the TOR Closing Date, and the AOC is responsible for the payment of all Utilities costs and expenses incurred on and after the TOR Closing Date.

4.3.2 Liability Exposure. The Parties have the following specific rights and obligations during the Interim Period only:

4.3.2.1 Responsibility for the Condition of the Real Property. The State Parties shall be responsible for the safe condition of the Real Property with the exception of repairs being performed by the County to the terra cotta cornices on the Building.

4.3.2.2 Indemnification Obligation of State Parties. The State Parties will and do indemnify, defend, and hold harmless the County Parties, with counsel reasonably acceptable to the County, from and against all claims, demands, liability, damages, attorneys fees, costs, expenses, and losses arising from or in any way relating to (1) all AOC Claims, and (2) Liability Claims where and to the extent that the Liability Claims result from the willful misconduct or negligent acts, errors, or omissions of a State Party;

4.3.2.3 Indemnification Obligation of County Parties. The County Parties will and do indemnify, defend, and hold harmless the State Parties, with counsel reasonably acceptable to the AOC, from and against all claims, demands, liability, damages, attorneys fees, costs, expenses, and losses arising from or in any way relating to Liability Claims where and to the extent that the Liability Claims result from the willful misconduct or negligent acts, errors, or omissions of a County Party.

4.3.2.4 Indemnified Party's Participation. The indemnifying Party must manage and be entirely responsible to handle and resolve all Liability Claims for which it is responsible under sections 4.3.2.1 or 4.3.2.3, as applicable. The indemnified Party may elect, but is not required, to retain its own attorney, at the indemnified Party's sole expense, to participate in the litigation, settlement negotiations,

or other dispute resolution procedures for any Liability Claim as to which it is the indemnified Party. If the indemnified Party elects to retain its own attorney to participate in the litigation, settlement negotiations, or other dispute resolution procedures for a Liability Claim, the indemnifying Party will reasonably cooperate with the indemnified Party, and the attorney retained by the indemnified Party, but the indemnifying Party retains the sole discretion regarding the resolution of claims for which it is responsible under sections 4.3.2.1 or 4.3.2.2.

4.3.2.5 Effect of Indemnification Rights. The rights of a Party to be indemnified under sections 4.3.2.1 or 4.3.2.3 cannot be deemed or construed to limit or diminish the obligation of the indemnified Party to perform its duties at Law or under any agreement between the County Parties and the State Parties.

4.3.2.6 Third-Party Contractor Insurance. At all times on and after the TOR Closing Date, each Party must require each of its Contractors to (i) obtain and maintain insurance of the type and with coverage amounts that are usual and customary to the type of business or exposures related to the work being performed on the Real Property, (ii) name both Parties as additional insureds by specific endorsement to their general liability policies, (iii) provide a waiver of subrogation in favor of both Parties with respect to all property insurance policies, and (iv) provide to the Parties a 30-day notice of cancellation or material change in any insurance coverage required hereunder. Unless the Parties otherwise agree, all Contractors must indemnify, defend, and hold harmless the County Parties and the State Parties from and against all claims, demands, liabilities, damages, attorney fees, costs, expenses, and losses arising from the performance by the Contractors under their contracts, and neither Party waives any right of recovery or subrogation against the other in respect of their contractual arrangements with the Contractors.

4.3.2.7 Workers' Compensation Coverage. Each Party will each maintain its own workers' compensation insurance covering its own employees, and neither Party will have any liability or responsibility for workers' compensation insurance coverage for employees of the other Party. The obligation of the Parties to provide workers compensation insurance may be satisfied, in whole or in part, by commercial insurance, a program or self-insurance or participation in a joint powers authority established for the purpose of pooling self-insured claims.

4.3.3 Property Insurance.

4.3.3.1 Property Insurance Policies to be Maintained. During the Interim Period, the County will provide the Property Insurance Policies and maintain them in full force and effect, and will make direct payment of all Property Insurance Costs, subject to the AOC's obligation to reimburse the County's Property Insurance Costs under section 4.3.3.2, below. Starting on the TOR Closing Date, the County shall include by specific endorsement to each of the Property Insurance Policies, the Judicial Council of California, the Administrative Office of the Courts, and the Court, as additional insureds or covered parties, as appropriate, and joint loss payees for any Property Claim payable under the terms and conditions of the Property Insurance Policies, with the same coverages and limits as the named insured under the Property Insurance Policies.

4.3.3.2 Property Insurance Costs. During the Interim Period, the AOC will reimburse the County for the County's Property Insurance Costs applicable to the Interim Period. The County's Property Insurance Costs for Main Street are based on an annual term that commences April 1 with an annual premium paid on March 31. The AOC will pay the portion of the annual premium that is applicable to the Interim Period as follows. Within 30 days after the end of each fiscal quarter during the Interim Period, the County will send the AOC an invoice and supporting documents reasonably detailing the Property Insurance Costs for the immediately preceding fiscal quarter, including the portion of the annual premium applicable to that quarter, provided that for any fiscal period falling partially within the Interim Period, the Property Insurance Costs for that fiscal quarter shall be prorated in accordance with section 4.3.14 of this Agreement. The AOC will reimburse the Property Insurance Costs to the County within 30 days after the AOC's receipt of that quarterly invoice. The AOC will be entitled to audit, at the AOC's sole cost and expense, the County's records concerning the Property Insurance Costs invoiced to the AOC for up to 12 calendar months prior to the AOC's audit. If the audit reveals that the AOC overpaid or underpaid the Property Insurance Costs for any fiscal quarter, the Parties will make the payments necessary to resolve the overpayment or underpayment within 30 days after the end of the audit. The County will not make any changes to the Property Insurance Policies without the prior written consent of the AOC.

4.3.3.3 Allocation of Risk for Property Damage Claims. While the County is providing and maintaining the Property Insurance Policies, the County will bear all of the risk arising from Property Damage Claims, and the County hereby waives, and will cause the providers of its Property Insurance Policies to waive, all rights of recovery against the State Parties and their applicable insurer(s) for any Property Claims payable under the terms and conditions of the Property Insurance Policies. The County will be solely and exclusively responsible to tender to the

providers of its Property Insurance Policies, and to process and pursue to final resolution, any and all Property Claims, including (if covered by the Property Insurance Policies) claims for costs associated with obtaining and relocating Court operations to, alternate space while any portion of the Real Property is being repaired or replaced. The Parties acknowledge that property insurance is “no fault” insurance; therefore, if any Property Loss occurs prior to the TOT Closing Date, there are no exclusions or conditions to payment, irrespective of the acts or omissions of either Party, other than those exclusions specifically set forth in the Property Insurance Policies.

4.3.3.4 Compliance with Property Insurance Policies. While the County is providing and maintaining the Property Insurance Policies, the County will provide the AOC with verification that the Property Insurance Policies are in full force and effect and, at the request of the AOC, with copies of the Property Insurance Policies, as the Property Insurance Policies may be issued or modified from time to time. The State Parties and the County Parties will comply in all material respects with all requirements for the use of the Real Property that are set forth in the Property Insurance Policies and that the County has provided to the AOC.

4.3.3.5 Property Insurance Proceeds. Upon the occurrence of any Property Loss during the Interim Period, the Parties will promptly meet and confer, in good faith, to determine how the proceeds of the Property Insurance Policies arising from the Property Claim will be allocated and used; provided that, the AOC shall have the right to meaningful participation with the County in deciding whether to restore or replace the damaged parts of the Real Property (“Damaged Property”).

4.3.3.6 Decision Not to Restore or Replace. If, as a result of the meeting described in section 4.3.3.5 above, neither Party elects to restore or replace the Damaged Property, and if any of the Building is uninhabitable as a result of the Property Loss, then the County will have the option to either (i) compensate the AOC for its Equity rights, if any, in the uninhabitable part of the Building, and the AOC will be solely responsible for its own relocation to and occupancy of alternate space, or (ii) provide the AOC with, and relocate the AOC to, an alternate “suitable and necessary” space as described in section 70311 of the Act. Within 30 days after the meeting of the Parties described in section 4.3.3.5 above, the County will send a written notice to the AOC stating the County’s election under this section 4.3.3.6. If the County selects the option described in (i) of this section 4.3.3.6, (1) the County shall be entitled to all of the proceeds of the Property Insurance Policies otherwise payable to the AOC pursuant to section 4.3.3.5 of this Agreement, to offset the cost of the County’s Equity payment to the AOC in an amount not to exceed the Equity payment obligation and (2) the County may deduct from the AOC’s Equity payment any insurance recovery the AOC receives from its insurers. If the County selects the option described in (ii) of this section 4.3.3.6: (1) the County shall be entitled to receive all of the proceeds of the Property Insurance

Policies otherwise payable to the AOC pursuant to section 4.3.3.5 of this Agreement to offset the County's cost of providing such alternate space; and (2) the County's cost to provide the AOC with alternate space shall also be offset by any insurance recovery the AOC receives from its insurers and such secondary insurance proceeds or recovery may be deducted from any payments owed by the County to the AOC, or the AOC shall otherwise compensate or credit the County for the value of such secondary proceeds. If the Parties cannot agree on the value of the AOC's Equity rights in the uninhabitable part of the Building, the Parties will select a mutually-acceptable Appraiser to determine the fair market value of those Equity rights. The Appraiser will deliver to both Parties its determination of value, and each Party will be responsible for one-half of the costs of the Appraiser. Any disputes under this section 4.3.3.6 will be resolved under section 11 of this Agreement. The foregoing provisions shall not relieve the County of its obligation to continue to pay the County Facilities Payment pursuant to the Act and section 6 of this Agreement. The foregoing provisions shall not alter the effectiveness of the Transfer of Responsibility accomplished by this Agreement. Nothing in this provision shall relieve either Party of its responsibility for the cost of its share of any deductible required by the Property Insurance Policies, which costs may be deducted from any compensation to be paid to the AOC by the County. Nothing in this provision shall preclude the Parties from agreeing to a different resolution in place of the County's obligations under this section 4.3.3.6, including but not limited to, the payment of agreed compensation by the County to the AOC in exchange for the AOC's release of any alleged rights or entitlements established by this section 4.3.3.6 or the Act.

4.3.4 Incident Reports. The County will maintain copies of any report of an incident, event, circumstance, or occurrence ("**Incident Reports**") that it prepares during the Interim Period for a period of five years following the end of the Interim Period, and at the request of the AOC, the County will provide the AOC with a complete copy of, or reasonable access to, those Incident Reports.

4.3.5 Vending Facilities. Notwithstanding the foregoing, the Parties will work with the State's Department of Rehabilitation to ensure the continuity of vending services in the Court Facility. Upon request by the State Parties, the County will assist with the termination of any vending services that the State Parties do not desire to continue in the Court Facility.

4.3.6 Building Equipment. If any Equipment Permits are not in full force and effect on the TOR Closing Date, the County will, at its sole cost and expense, remain responsible to obtain and deliver to the AOC current and valid Equipment Permits as soon as possible after the TOR Closing Date. Following the AOC's receipt of the current and valid Equipment Permits, the AOC shall thereafter be responsible for maintaining and renewing all required Equipment Permits for the Building Equipment.

4.3.7 Security-Related Areas. The County Sheriff's Department will remain liable and responsible for the secure entry, exit, transport, and holding of prisoners attending Court sessions under the Security Services MOU. This Agreement does not supersede, replace, or modify any other agreement between the County and the Court with respect to security staffing for the Real Property including the Security Services MOU.

4.3.8 Telephone Services. Under this Agreement, the County will continue to offer telephone services to the State Parties, for the benefit of the Court, in the Court Facility on the costs, terms, and conditions set forth in the Telecommunications MOU dated June 15, 2004.

4.3.9 Parking. At all times on and after the TOR Closing Date, the AOC shall be responsible for the operation, maintenance, and repair of the Court Parking at the AOC's sole cost.

4.3.10 Service Contracts. If not completed before the TOR Closing Date, the Parties will work together, diligently and in good faith, to transfer the Approved Service Contracts where possible, and terminate the other Service Contracts, in a manner that avoids disruption to the operation of the Real Property. The County will endeavor to cause the Approved Service Contracts to be assigned to the AOC retroactive to the TOR Closing Date, and will obtain a written consent to the assignment of each Approved Service Contract from the other party thereto. If any Approved Service Contracts cannot be assigned to the AOC, the Parties will work together to cause new contracts for the goods or services provided under those Approved Service Contracts to be entered into directly by the AOC, and the County will terminate each of those Approved Service Contracts when the AOC's new agreement for the relevant services or goods has commenced, or earlier upon the written request of the AOC. The County will remain responsible for all Service Contracts that are not Approved Service Contracts (including for all charges incurred under those Service Contracts) and will promptly terminate those Service Contracts. The County will be responsible to pay all charges and fees incurred under all Service Contracts for all periods prior to the TOR Closing Date, and the AOC is responsible for payment of all fees and charges incurred on and after the TOR Closing Date under all Approved Service Contracts. The County will send to the AOC all invoices and other communications received by the County under the Approved Service Contracts on and after the TOR Closing Date.

4.3.11 Correspondence. The County will direct all correspondence, invoices, and information related to the management, operation, maintenance, or repair of the Real Property for the period on and after the TOR Closing Date to the AOC's Office of Court Construction and Management pursuant to section 12 of this Agreement.

4.3.12 County Facilities Payments. The County will make all County Facilities Payments in accordance with the Act and section 6 of this Agreement.

4.3.13 Personal Property. If either Party determines that there exists any Tangible Personal Property or Intangible Personal Property not previously transferred or assigned to the AOC, that Party will promptly provide to the other Party a notice that includes a reasonably-detailed, written description of that property. At the AOC's request, the County will transfer, convey, or assign to the AOC any or all of the Tangible Personal Property or Intangible Personal Property described in that notice unless the County desires to exclude certain property in that notice from the transfer and the failure to originally identify such property as excluded was inadvertent. Either Party may request that the Parties meet to determine whether such property should be transferred to the AOC and if the Parties do not agree, the Parties shall resolve their dispute in accordance with section 11 of this Agreement.

4.3.14 Adjustments. The Parties will make the appropriate adjustments for proration or computations required by this Agreement or the Closing Documents as promptly as possible once accurate information becomes available evidencing that either Party is entitled to an adjustment. Any proration will be based on a 365-day fiscal year. The Party entitled to the adjustment must make written demand on the other Party for the adjustment within one year after the TOR Closing Date, and provide a reasonably-detailed explanation of the basis for the demand and all supporting documentation. The Parties will promptly pay each other any corrected proration or adjustment amounts.

4.3.15 Relief from Section 70311 Obligations. Subject to section 4.3.14 above, effective upon the TOR Closing, the AOC confirms and agrees that the County will be and is relieved of any responsibility under section 70311 of the Act for providing to the Court those necessary and suitable court facilities currently located in the Building, except as otherwise specifically provided in this Agreement and the Act. Notwithstanding the foregoing, nothing in this section 4.3.15 limits or diminishes the obligations of the County under section 4.3.3.6 of this Agreement.

4.3.16 Liability for Seismic-Related Damage and Injury.

4.3.16.1 Application of Section 70324 of the Act. The Parties acknowledge that the AOC has assigned the Building a Level V seismic rating as defined in section 70301 (h) of the Act. Therefore, section 70324 of the Act applies to the Transfer of Responsibility, and section 70324 of the Act will continue to apply until any one of the events described in section 70324(b)(1) through (4) of the Act has occurred notwithstanding any subsequent repeal of section 70324 of the Act unless the repealing or related legislation provides for the release of any existing liability under that section.

4.3.16.2 Allocation of Liability and Obligations. The liabilities and obligations of the Parties (including any indemnification obligations) with respect to any seismic-related damage and injury on or to the Real Property shall be as set forth in section 70324 of the Act which, for the convenience of the Parties, is attached as **Exhibit “O”** and incorporated into this Agreement. At all times that section 70324 of the Act applies in respect of the Real Property, the terms of section 70324 of the Act and this section 4.3.16 will prevail over any conflicting provisions of the Act, this Agreement, or the Closing Documents. As provided in section 70324(d) of the Act, in no event will section 70324 of the Act be deemed to impose greater liability on the County for seismic-related damage to third parties than the County would have if the Transfer had not occurred.

4.3.16.3 Termination of this Section and Related Indemnities. When section 70324 of the Act no longer applies in respect of the Real Property, this section 4.3.16 will immediately and automatically expire and be of no further force or effect with respect to any subsequent seismic-related damage or injury in respect of the Real Property. Thereafter, the other terms of this Agreement and the Closing Documents, or any agreement entered into under section 70324(a)(4) of the Act and approved by the Director of Finance, if applicable, will apply to allocation of liability for seismic-related damage or injury on or to the Real Property.

4.3.17 Condemnation. If either Party receives written notice during the Interim Period advising of an actual or intended condemnation of the Real Property (“Condemnation Notice”), that Party will immediately deliver a copy of the Condemnation Notice to the other Party and the Parties will promptly meet and confer, in good faith, to determine how to proceed. In the event of an actual condemnation during the Interim Period, the Parties will cooperate with each other in good faith to obtain the maximum award that may be obtained from the condemning authority. The County will have the option to either (i) compensate the AOC for its Equity rights, if any, out of the proceeds arising from such condemnation, conveyance or transfer, and the AOC will be solely responsible for its own relocation to and occupancy of alternate space, or (ii) provide the AOC with an alternate “suitable and necessary” space as described in section 70311 of the Act. Regardless of the option exercised by the County under this section, the County shall remain relieved of any responsibility under section 70311 of the Act in accordance with the Transfer of Responsibility accomplished by this Agreement.

4.3.18 No Material Changes. During the Interim Period, the County shall not: (1) transfer, agree to transfer, or enter into any agreement, affecting any right, title, or interest in the Real Property, to or with any third party except as permitted by this Agreement or the Act; (2) do anything that would result in a change to the zoning or entitlements for use of the Real Property; or (3) act in any way that would result in the Real Property being subject to a Deficiency.

4.3.19 Disputes. Each Party will promptly notify the other Party in writing of any Dispute that arises after the Effective Date that concerns or alleges: (1) acts or omissions of the Notifying Party committed at any time related to the Property; or (2) an event or incident to which the Notifying Party's indemnification obligations in section 8.2 of this Agreement do or may apply. The Notifying Party will manage and be entirely responsible for the resolution of those Disputes, and will be liable to the extent that any damages, losses, liabilities, claims, attorneys' fees or costs arising from the Disputes result from willful misconduct or negligent acts, errors or omissions of the Notifying Party. The other Party may elect, but is not required, to participate at its sole expense in the litigation, settlement negotiations, or other dispute-resolution procedures for those Disputes. If the other Party elects to participate in the litigation, settlement negotiations, or other dispute-resolution procedures for a Dispute, the Notifying Party will reasonably cooperate with the other Party's participation, but the Notifying Party retains sole discretion regarding the resolution of the Disputes.

5. CLOSING

5.1 TOR Closing. The TOR Closing will occur upon the later of (1) the signature of this Agreement and the TOR Closing Documents by the last of the Parties to sign, or (2) the date on which the State Department of Finance has approved the County Facilities Payment, as more specifically provided in section 6.1.1 of this Agreement. The TOR Closing Date will not be affected by the date of delivery of the signed originals of this Agreement or the TOR Closing Documents.

5.1.1 TOR Closing Documents. The TOR Closing Documents are as follows:

5.1.1.1 [the Assignment of Intangibles];

5.1.1.2 the Memorandum; and

5.1.1.3 any other documents required by Law or reasonably requested by the State Parties or the County to complete the TOR Closing.

5.1.2 Time for Signature of TOR Closing Documents. The Parties will sign the TOR Closing Documents on or as expeditiously as possible after the Effective Date. If the TOR Closing Documents have not been signed within 10 days after the Effective Date, either Party that has signed the TOR Closing Documents may terminate this Agreement and the TOR Closing Documents upon five business days notice to the other Party, but if the TOR Closing Documents are fully signed by the Parties prior to the end of the five business day period, any termination notice shall be of no force or effect.

5.1.3 Delivery of Signed Agreement, TOR Closing Documents, and County Authorizing Document. The last Party to sign this Agreement and the TOR Closing Documents must deliver, within three business days after signing: (i) to the County, one signed original of this Agreement and the TOR Closing Documents, and (ii) to the AOC, all remaining signed originals of this Agreement, and the TOR Closing Documents, and the County Authorizing Document. The AOC will endeavor to cause the Memorandum to be recorded in the County Recorder's Office within 10 business days after the AOC's receipt of the signed originals of this Agreement, the TOR Closing Documents, and the County Authorizing Document.

5.1.4 Delivery of Possession. On the TOR Closing Date, the County will deliver to the AOC custody and control of, and responsibility for, the Property.

5.2 TOT Closing. The TOT Closing will occur upon the recordation of the Grant Deed in the County Recorder's Office, which will occur on or after the date that the County completes the Pending Project for the repair of the terra cotta cornice of the Building. The Parties acknowledge that the AOC may not seek the issuance of the Acceptance Document from the PWB until the County has completed the Pending Project for repair of the terra cotta cornice of the Building.

5.2.1 TOT Closing Documents. The TOT Closing Documents are as follows:

5.2.1.1 the Grant Deed;

5.2.1.2 the Certificate;

5.2.1.3 the Termination; and

5.2.1.4 any other documents required by Law or reasonably requested by the County, the State Parties, or AOC's title insurance company to effect the Transfer of Title.

5.2.2 Execution and Delivery of TOT Closing Documents. The County will execute and deliver the TOT Closing Documents to the AOC within 30 days after the date that the TOT Closing Documents are requested in writing by the AOC. The AOC will present this Agreement, the signed TOT Closing Documents, and the County Authorizing Document to the PWB for approval of the Transfer of Title **within 30 days following the County's completion of the Pending Project for repair of the terra cotta cornice of the Building.** The Parties will work together, in a good faith, cooperative manner, to effect the Transfer of Title and to resolve to the satisfaction of the PWB any condition of the Real Property that the PWB requires be resolved prior to the PWB's approval of the Transfer of Title.

5.2.3 Delivery of Title; Termination of Memorandum. On the TOT Closing Date, the County will deliver to the State Parties title to the Real Property. The AOC will endeavor to record the Termination in the County Recorder's Office within 10 business days after the TOT Closing Date.

5.3 Conditions for Closing.

5.3.1 TOR and TOT Closing Conditions. Neither Party will be obligated to consummate the Transfers unless the following conditions are satisfied or waived prior to the applicable Closing Date. The conditions for the benefit of the County may only be waived by the County, and the conditions for the benefit of the AOC may only be waived by the AOC.

5.3.1.1 Conditions for the Benefit of the AOC. All of the County's representations and warranties in this Agreement must be accurate and complete in all material respects as though made on the applicable Closing Date; the County must not have breached any of the County's representations, warranties, or covenants in this Agreement; there must be no County Event of Default under this Agreement nor any circumstance which, but for the passage of time or the giving of notice or both, would constitute a County Event of Default as of the applicable Closing Date; and the State Department of Finance must have approved the County Facilities Payment as provided in section 6.1.1 of this Agreement.

5.3.1.2 Conditions for the Benefit of the County. All of the AOC's representations and warranties in this Agreement must be accurate and complete in all material respects as though made on the applicable Closing Date; the AOC must not have breached any of the AOC's representations, warranties, or covenants in this Agreement; there must be no AOC Event of Default under this Agreement nor any circumstance which, but for the passage of time or the giving of notice or both, would constitute an AOC Event of Default as of the applicable Closing Date; and the State Department of Finance must have approved the County Facilities Payment as provided in section 6.1.1 of this Agreement.

5.3.2 Additional TOT Closing Conditions for the Benefit of the AOC. In addition to the conditions set forth in section 5.3.1.1 above, the AOC is not obligated to consummate the Transfer of Title unless on or before the TOT Closing Date: the PWB has approved the Transfer of Title as evidenced by the AOC's receipt of the Acceptance Document; a title insurance company acceptable to the State Parties is irrevocably committed to issue an owner's policy of title insurance to the State on the TOT Closing Date insuring the State's title to the Real Property, subject only to exceptions acceptable to the State Parties; and the County must have completed the Pending Project for the repair of the terra cotta cornice of the Building.

6. COUNTY FACILITIES PAYMENT

6.1 Amount of County Facilities Payment. The amount of the County Facilities Payment submitted to the State Department of Finance is \$, subject to adjustment under section 70362 of the Act.

6.1.1 State Department of Finance Approval. If the State Department of Finance does not approve the County Facilities Payment in an amount equal to or less than the annual amount set forth in section 6.1 of this Agreement, the Parties will promptly meet and confer to determine how to proceed in respect of this Agreement and the Transfers, and the TOR Closing Date will not occur unless and until the County Facilities Payment has been approved by the State Department of Finance in an amount that is either (a) equal to or less than the amount set forth in section 6.1, above, or (b) has been approved in writing by both the AOC and the County. If the County Facilities Payment has not been approved by the State Department of Finance in accordance with (a) or (b) of this section 6.1.1 by 180 days after the Effective Date, either Party may cancel and terminate this Agreement upon 10 days prior notice to the other Party; provided that, if the State Department of Finance's approval of the County Facilities Payment is received in accordance with (a) or (b) of this section 6.1.1 during the 10 day period, any termination notice will be of no force or effect.

6.2 County Facilities Payment Obligation. The County will pay the County Facilities Payment to the Controller every fiscal quarter under Article 5 of the Act and section 6 of this Agreement, except that the County must deliver to the Controller the first quarterly installment within five business days after the TOR Closing Date. Unless the TOR Closing Date is on the first day of a fiscal quarter, the first installment of the County Facilities Payment will be prorated under section 4.3.14 of this Agreement for the period from the TOR Closing Date to and including the last day of the fiscal quarter in which the TOR Closing Date occurs, subject to adjustment under section 70362 of the Act.

7. REPRESENTATIONS AND WARRANTIES

Each Party makes the representations and warranties in this section 7 to the other Party effective on each of the Effective Date, the TOR Closing Date, and the TOT Closing Date. Each Party will give written notice to the other within five business days of its discovery of any facts or circumstances that would render any information contained in that Party's representations and warranties in this Agreement or any Closing Document incomplete, untrue, or misleading, but if a Party makes that discovery within seven calendar days prior to the applicable Closing Date, then that Party must immediately deliver written notice of the relevant information to the other Party, whereupon the applicable Closing will be automatically delayed to allow the Party

receiving that notice sufficient time to decide whether to proceed with the Closing of the applicable Transfer.

7.1 The County's Representations and Warranties. The phrase "to the best of the County's knowledge" or words of similar import, means the County's actual knowledge, after reasonable independent investigation and inquiry.

7.1.1 Good Standing. The County is a political subdivision of the State duly organized and validly existing under the Law of the State.

7.1.2 Authority. The County Authorized Signatory has been duly authorized and empowered to sign this Agreement and the Closing Documents on behalf of the County, and the County has taken all steps and obtained all approvals required to authorize and empower the County to sign and perform this Agreement and the Closing Documents.

7.1.3 Due Execution and Delivery. This Agreement and the Closing Documents are legal, valid, and binding obligations of, and are fully enforceable against, the County.

7.1.4 No Conflict. This Agreement and the Closing Documents do not violate any provision of any agreement, obligation, or court order to which the County is a party or by which the County or any of its assets is subject or bound. Other than the PWB's approval of the Transfer of Title and approval of the County Facilities Payment by the State Department of Finance, no other action of any governmental agency or authority is required for, and the County has no actual knowledge of any Law in effect that would prohibit, the County's execution, delivery, or performance of its obligations under this Agreement or the Closing Documents.

7.1.5 Title to Real Property. Other than any rights and interests that have been recorded as encumbrances on the Real Property prior to the Effective Date: (1) the County has good and marketable fee title to the Real Property, free and clear of any liens, claims, encumbrances, or security interests in favor of third parties; (2) no person or entity other than the County has any title or interest in or right to occupy or use the Real Property; and (3) the County has not granted, conveyed, or otherwise transferred to any person or entity any present or future right, title, or interest in or to the Real Property.

7.1.6 Title to Personal Property. Except for the Excluded Tangible Personal Property, there is no Personal Property owned by the County Parties, and except as provided in section 4.3.13, to the extent the County has any right, title, or interest in or to any Personal Property, effective as of the TOR Closing Date, the County transfers, conveys, and quitclaims the same to the AOC.

7.1.7 [List of Service Contracts. To the best of the County's knowledge, the list of Service Contracts attached to this Agreement as **Exhibit "K"** is a correct and complete list of all Service Contracts related to the Court Facility.]

7.1.8 No Disputes. To the best of the County's knowledge, with the exception of the Dispute specifically listed in **Exhibit "I"**, there are no Disputes pertaining to the Property or the County's right, title, and interest in and to the Property.

7.1.9 No Occupancy Agreements. To the best of the County's knowledge, the County is not a party to any Occupancy Agreements entitling a third party other than a County Party or a State Party to occupy or use the Real Property

7.1.10 No Violations of Law. The County has no actual knowledge of, nor has the County received any written notice from any State, federal, or other governmental or quasi-governmental authority relating to: (1) any violation of Law, whether or not appearing in public records, with respect to the Property, which violation has not been corrected to the satisfaction of the State, federal, or other governmental or quasi-governmental authority that issued the notice, or (2) any unrecorded restriction applicable to the Real Property.

7.1.11 Full and Complete Disclosure. The County conducted a reasonable and diligent search of its records for, and provided to the AOC, all existing Property Disclosure Documents within the County's possession, custody, or control. The County maintains the Property Disclosure Documents in its ordinary course of business and has not intentionally altered any Property Disclosure Documents in any manner that renders them inaccurate, incomplete, or misleading.

7.1.12 No Condemnation. The County has not received a written notice of any pending modification of a street or highway contiguous to the Real Property, or any existing or proposed eminent domain proceeding that could result in a taking of any part of the Real Property.

7.1.13 No Environmental Violations. Except as set forth in the Property Disclosure Documents or in any environmental assessments or investigations of the Real Property performed by the AOC, the County has no knowledge of the actual, threatened, or suspected presence of any Hazardous Substance, and there are no existing violations of Environmental Laws, in, on, under, adjacent to, or affecting the Real Property, except for any Hazardous Substance used or held in conformity with Environmental Laws.

7.1.14 No Security-Related Areas. There are no parts of the Real Property dedicated to or primarily used for secure entry, exit, holding, or transport of prisoners attending Court sessions.

7.1.15 No Special Circumstances. Except for the repair of the terra cotta cornice of the Building, the County has not undertaken or commenced any Pending Projects on the Real Property, the Real Property is not subject to “bonded indebtedness” as defined in section 70301(a) of the Act, and the Building is not an “historical building” as defined in section 70301(f) of the Act.

7.1.16 100% Court Occupancy. The Court occupies the entirety of the Building.

7.2 AOC’s Representations and Warranties. The phrase “to the best of the AOC’s knowledge,” or words of similar import, means the AOC’s actual knowledge, after reasonable independent investigation and inquiry.

7.2.1 Good Standing. The Administrative Office of the Courts is the staff agency to the Council, an entity established by the Constitution of the State, validly existing under the Law of the State.

7.2.2 Due Execution and Delivery. This Agreement and the Closing Documents are legal, valid, and binding obligations of, and are fully enforceable against, the AOC.

7.2.3 No Conflict. This Agreement and the Closing Documents do not violate any provision of any agreement, obligation, or court order, to which the AOC is a party or by which the AOC or any of its property is subject or bound. Other than the PWB’s approval of the Transfer of Title and approval of the County Facilities Payment by the State Department of Finance, no other action of any governmental agency or authority is required for, and the AOC has no actual knowledge of, any Law in effect that would prohibit, the AOC’s execution, delivery, or performance of its obligations under this Agreement or the Closing Documents.

7.3 Representations and Warranties for TOT Closing. Each Party makes the representations and warranties set forth in this section 7.3 to the other Party effective only on the TOT Closing Date:

7.3.1 The Certificate. To the best knowledge of each Party, the matters described in the Certificate, if any, are the only exceptions to the accuracy or completeness of that Party’s representations and warranties set forth in section 7.1 or 7.2 of this Agreement, respectively, as of the TOT Closing Date.

8. INDEMNITIES

8.1 AOC’s Indemnities. Subject to section 8.3, below, the AOC indemnifies, defends, and holds harmless the County Parties (with counsel reasonably acceptable to

the County) from and against all claims, demands, liability, damages, attorneys fees, costs, expenses, and losses (referred to in this section 8 as “**Indemnified Loss**”) asserted against the County Parties arising from the matters described below in this section 8.1:

8.1.1 AOC Breach. Any breach by the AOC of its obligations set forth in this Agreement or the Closing Documents.

8.1.2 Representations and Warranties. Any breach of or inaccuracy in the AOC’s representations and warranties contained in sections 7.2 or 7.3 of this Agreement or in the Closing Documents.

8.1.3 AOC Responsibilities. Any event that occurs, or Dispute that commences, on or after the TOR Closing Date, to the extent that it results from, or is directly attributable to, (i) the Court’s occupancy of the Real Property, or (ii) the AOC’s operation of or responsibility for the Real Property, in each case, on or after the TOR Closing Date.

8.2 County’s Indemnities. Subject to section 8.3, below, the County indemnifies, defends, and holds harmless the State Parties (with counsel reasonably acceptable to the State Parties) against all Indemnified Loss asserted against the State Parties arising from the matters described below in this section 8.2:

8.2.1 County Breach. Any breach by a County Party of its obligations set forth in this Agreement or in the Closing Documents;

8.2.2 Representations and Warranties. Any breach of or inaccuracy in the County’s representations and warranties contained in sections 7.1 or 7.3 of this Agreement or in the Closing Documents;

8.2.3 Pre-TOR Closing Events. Any event or Deficiency that occurred or Dispute that relates to, the period prior to the TOR Closing Date, to the extent that it results from, or is directly attributable to, the County’s ownership, possession, operation, or management of, or responsibility for, the Real Property before the TOR Closing Date, and any event that occurs, or Dispute that commences, on or after the TOR Closing Date, to the extent that it results from, or is directly attributable to, the County’s ownership, possession, operation, management of, or responsibility for, the Real Property before the TOR Closing Date, excluding any conditions of the Real Property resulting from “deferred maintenance” as that term is defined under the Act; and

8.2.4 CERCLA. Under section 70393(d) of the Act, any liability imposed on the State Parties pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (42 U.S.C. sections 9601 et seq.),

or related provisions, for conditions that existed in, on, or under the Real Property at the time of the TOR Closing whether or not known to the County.

8.3 Indemnity Exclusions. Neither Party is entitled to be indemnified, defended, or held harmless by the other Party under this Agreement in respect of any event, circumstance, or condition to the extent that it arises from its own negligence or willful misconduct, nor from any property insurance claim for which the Party is responsible under this Agreement. The obligations of a Party under section 8.1 or 8.2 of this Agreement, as applicable, will in no event release the other Party from, or diminish its obligation to fully and faithfully perform its duties under, this Agreement, the Closing Documents, or any other agreement.

9. RIGHT TO AUDIT

The County will maintain all records relating to the County Facilities Payment due and owing from the County under the Act, according to the time limits contained in the instructions for calculation of the County Facilities Payment. The County will also maintain an accounting system, supporting fiscal records, and agreements related to the Property, including the Property Disclosure Documents, adequate to ensure that all claims and disputes arising under this Agreement or the Closing Documents can be resolved in accordance with the requirements of this Agreement and the Act. The County will also maintain records relating to all receipts and expenditures from the local courthouse construction fund established under Government Code section 76100, which the AOC has the right to audit under section 70391(d)(2) of the Act. The AOC may audit or inspect these County records upon reasonable prior notice.

10. DEFAULT NOTICE AND CURE

Upon a Party's breach or default of any provision of this Agreement, the non-defaulting Party will provide written notice to the defaulting Party of the breach or default ("**Default Notice**"). Upon receipt of the Default Notice, the defaulting Party will have 30 calendar days to cure the breach or default described in the Default Notice and to provide evidence of that cure to the non-defaulting Party. If the breach or default is not capable of cure within the 30 calendar day period, then no breach or default can be deemed to have occurred by reason of the failure to cure so long as the defaulting Party promptly begins and diligently and continuously performs the cure to completion within a reasonable time period, not to exceed 90 calendar days from commencement of the cure ("**Cure Period**"). If the defaulting Party does not provide evidence of the cure to the non-defaulting Party within the Cure Period, then the defaulting Party will be deemed to have committed an "**Event of Default**," and the non-defaulting Party will have the right, but not the obligation, to pursue its rights with respect to resolution of disputes under

section 11 of this Agreement. The Parties may mutually agree to commence the dispute resolution procedures in section 11 of this Agreement before the end of the Cure Period.

11. DISPUTE RESOLUTION

11.1 Unassisted Negotiation; Mediation. In the event of a dispute between the Parties relating to performance of the Parties' obligations under this Agreement, or any aspect of the Transfer transactions contemplated in this Agreement, the County Administrative Officer and an Assistant Director of the AOC's Office of Court Construction and Management, or their respective designees, will meet to discuss a resolution to the dispute. Any designee appointed must have the authority to negotiate for, and to effectively recommend settlement to, the Party that he or she represents. If the Parties are not able to resolve their dispute within 30 calendar days through that unassisted negotiation, they will attempt to resolve the dispute by mediation under this section 11.1. If the dispute concerns a matter within the jurisdiction of the Court Facilities Dispute Resolution Committee ("**CFDRC**"), established by section 70303 of the Act, the Parties must first mediate the dispute before either Party may commence a dispute resolution proceeding before the CFDRC.

11.1.1 Initiation of Mediation. Either or both of the Parties may request the initiation of mediation for any dispute described in section 11.1, whether or not the dispute falls within the CFDRC's jurisdiction, by delivering a written request for mediation ("**Mediation Request**") to the other Party. The Mediation Request must (1) include a brief summary of the issues in dispute, (2) state the dates on which the requesting Party is unavailable to attend the mediation within the immediately-succeeding 90 calendar days after the delivery to the other Party of the Mediation Request, and (3) list at least three neutral mediators who are acceptable to the requesting Party for mediation of the dispute. Within five business days after the requesting Party's delivery of a Mediation Request to the other Party, the responding Party must deliver to the requesting Party a response to the Mediation Request ("**Mediation Response**"), which must: (a) include a brief summary of the issues in dispute (which may or may not be the same as the summary provided by the requesting Party); (b) state the dates on which the responding Party is unavailable to attend the mediation within the 85 calendar days immediately following the requesting Party's receipt of the Mediation Response; and (c) state whether any of the neutral mediators listed in the Mediation Request are acceptable to the responding Party and, if none are, then the Mediation Response must list at least three neutral mediators who are acceptable to the responding Party.

11.1.2 Selection of Mediator. Within 10 calendar days after delivery to the requesting Party of the Mediation Response, the Parties will attempt in good faith to agree upon a neutral mediator to preside over the mediation. If the Parties are not able to agree upon a neutral mediator within 10 calendar days after delivery to the requesting

Party of the Mediation Response, the Parties must apply to the JAMS Government Dispute Resolution Group (“**JAMS**”) for selection of a neutral mediator to mediate the dispute. The Parties’ application to JAMS must be filed in accordance with the JAMS International Mediation Rules then in effect, and must include copies of the Mediation Request and Mediation Response. The mediator must be a person with a reasonable degree of experience and expertise in handling disputes involving governmental entities. The mediator must have no current or prior involvement with either Party in the negotiations between the Parties related to the Act or any of the court facility transfers provided for in the Act, and shall discharge his or her duties impartially and as a neutral, independent participant to the mediation process to assist the Parties to achieve a settlement and compromise of their dispute, taking into consideration the relevant facts, applicable Law, and the pertinent provisions of any relevant agreement between the Parties. The selection of a mediator by JAMS will be final and binding on the Parties, and the Parties shall be equally responsible for the payment of all fees and costs charged by JAMS.

11.1.3 Cost of Mediation. The Parties will share equally in payment of all costs of the mediation, including the compensation of the mediator. The Parties and the mediator must reach a written agreement regarding the mediator’s compensation and expenses before the mediation is commenced.

11.1.4 Date, Time, and Place of Mediation. In consultation with the Parties, the mediator will fix the date, time, and place of each mediation session. The mediation may be held at any convenient location agreeable to the Parties and the mediator. Mediation must be completed within 90 calendar days after the requesting Party’s delivery to the responding Party of the Mediation Request.

11.1.5 Attendance at Mediation. Both Parties must attend the mediation session(s). The Parties may satisfy this attendance requirement by sending a representative familiar with the facts of the dispute, who has the authority to negotiate on behalf of, and to effectively recommend settlement to, the Party he or she represents. Any Party to the mediation may have the assistance of an attorney or other representative of its choice at its own cost. Other persons may attend the mediation sessions only with the consent of the Parties and the mediator.

11.1.6 Statements Before Mediation. The mediator will determine the manner in which the issues in dispute will be framed and addressed. The Parties should expect that the mediator will request a premediation statement outlining facts, issues, and positions of each Party (“**Premediation Statement**”) in advance of the mediation session. At the discretion of the mediator, the Premediation Statements or other information may be mutually exchanged by the Parties.

11.1.7 Confidentiality. The mediation will be confidential in all respects, and the provisions of California Evidence Code sections 1152 and 1154 will apply to all written and verbal evidence presented in the mediation and to settlement communications made in the Premediation Statement, during the mediation itself, or otherwise in furtherance of or related to the mediation or the settlement of the dispute. The Premediation Statements shall be confidential, for settlement purposes only, and will not be admissible for any purpose other than for the mediation. Without limiting the foregoing, the provisions of California Evidence Code sections 1115 through 1128, inclusive, will apply in connection with any mediation under this Agreement.

11.2 Referral to CFDRC. After compliance with the terms of section 11.1 of this Agreement, any unresolved dispute involving any of the matters set forth in sections 70303(c)(1) through (5) of the Act will be referred to the CFDRC for hearing and recommendation to, and decision by, the Director of Finance, under the Act and the CFDRC Regulations.

12. NOTICES

Any notice or communication required to be sent to a Party pursuant to this Agreement must be sent in writing by personal delivery (including overnight courier service), certified U.S. mail, postage pre-paid and with return receipt requested, or facsimile transmission, sent during regular business hours of the recipient to the Parties at their addresses or fax numbers indicated below. Routine exchange of information may be conducted via telephone, facsimile, and/or electronic means, including e-mail.

If to the AOC:

Administrative Office of the Courts
Attention: Assistant Director, Office of Court Construction and
Management
455 Golden Gate Avenue
San Francisco, CA 94102
Voice: 415-865-4040
Fax: 415-865-8885

With a copy to:

Administrative Office of the Courts
Office of the General Counsel
Attention: Managing Attorney, Real Estate Unit
455 Golden Gate Avenue
San Francisco, CA 94102
Voice: 415-865-4057
Fax: 415-865-8885

In addition, all audit requests and notices by the County relating to termination of this Agreement or alleged breach or default by the AOC of this Agreement or a Closing Document must also be sent to:

Administrative Office of the Courts
Attention: Senior Manager, Business Services
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Voice: 415-865-4090
Fax: 415-865-4326
E-mail: grant.walker@jud.ca.gov

If to the County:

County of El Dorado
Chief Administrative Office
Attention: Chief Administrative Officer
330 Fair Lane
Placerville, CA 95667
Voice: (530) 621-5567
Fax: (530) 626-5730

With a copy to:

County of El Dorado
Office of the County Counsel
Attention: County Counsel
330 Fair Lane
Placerville, CA 95667
Voice: (530) 621-5770
Fax: (530) 621-2937

A Party may change its address for notice under this Agreement by giving written notice to the other Party in the manner provided in this section 12. Any notice or communication sent under this section 12 will be deemed to have been duly given as follows: (1) if by personal delivery, on the date actually received by the addressee or its representative at the address provided above, or (2) if sent by certified U.S. mail, return receipt requested, on the first business day that is at least three calendar days after the date deposited in the U.S. Mail, or (3) if sent by facsimile transmission, upon electronic confirmation of good receipt by the receiving facsimile machine, except that facsimile notice received after normal business hours of the recipient will be deemed received at 9:00 a.m. on the first business day after the date on which the facsimile notice was confirmed electronically.

13. SURVIVAL OF TERMS AND PROVISIONS

The following sections of this Agreement will survive the TOR Closing and the TOT Closing, and will thereafter remain in full force and effect: 3, 4, 5.1.3, 5.1.4, 5.2, 5.3, and 6 through 14, inclusive. All other rights and duties hereunder will cease upon termination of this Agreement or the TOT Closing. In the event of the termination of this Agreement, all documents, other tangible objects, and information containing or representing confidential or proprietary information disclosed by one Party to the other, and all copies that are in the possession or under the control of the other Party will be and remain the property of the Party that disclosed the documents, objects, and information, and all those documents and tangible objects will be promptly returned to the Party that disclosed them at that Party's written request.

14. MISCELLANEOUS

14.1 Waivers. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by both the AOC and the County. Waiver by either Party at any time of any breach of this Agreement cannot be deemed a waiver of or consent to a breach of the same or any other provision of this Agreement. If a Party's action requires the consent or approval of the other Party, that consent or approval on any one occasion cannot be deemed a consent to or approval of that action on any later occasion or a consent or approval of any other action.

14.2 Force Majeure. Neither Party will be responsible for performance under this Agreement to the extent performance is prevented, hindered, or delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions, or terrorism, whether foreseeable or unforeseeable.

14.3 Assignment. Neither Party may assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without

the prior written consent of the other Party. Even if that consent is given, any assignment made in contravention of any Law will be void and of no effect.

14.4 Binding Effect. This Agreement binds the Parties and their permitted successors and assigns.

14.5 Third Parties Benefited. The State Parties are intended beneficiaries of all provisions of this Agreement and the Closing Documents for the benefit of the AOC.

14.6 Governing Law. This Agreement, and the Parties' performance under this Agreement, will be exclusively governed by the laws of the State without regard to its conflict of law provisions.

14.7 Construction. The headings used in this Agreement are for convenience only and will not affect the meaning or interpretation of this Agreement. The words "hereof," "herein," and "hereunder," and other words of similar import, refer to this Agreement as a whole and not to any subdivision of this Agreement. This Agreement and the Closing Documents will not be construed against either Party as the principal draftsman. The words "include" and "including" when used are not exclusive and mean "include, but are not limited to" and "including but not limited to," respectively. The capitalized terms used in this Agreement have the meanings ascribed to them in this Agreement.

14.8 Integration; Amendments. This Agreement and the Closing Documents contain the entire agreement of the Parties with respect to the Transfers, and supersede all previous communications, representations, understandings, and agreements, whether verbal, written, express, or implied, between the Parties. This Agreement may be amended only by written agreement signed by both of the Parties.

14.9 Incorporation By Reference. The factual recitals and Exhibits contained in or attached to this Agreement are all incorporated into and made a part of this Agreement for all purposes, and all references to this Agreement in any of the recitals or Exhibits will be deemed to include the entirety of this Agreement.

14.10 Severability. If a term of this Agreement is inconsistent with applicable Law, then on the request of either Party, the Parties will promptly meet and confer to determine how to amend the inconsistent term in a manner consistent with Law, but all parts of this Agreement not affected by the inconsistency will remain in full force and effect.

14.11 Further Assurances. The Parties agree to cooperate reasonably and in good faith with one another to (1) implement the terms and provisions set forth in this Agreement, the Closing Documents, and the Act, and (2) consummate the transactions

contemplated herein, and shall execute any further agreements and perform any additional acts that may be reasonably necessary to carry out the purposes and intent of this Agreement, the Closing Documents, and the Act.

CONTINUED ON NEXT PAGE

I agree to the terms of this Agreement.

**JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE
COURTS**

APPROVED AS TO FORM:

Administrative Office of the Courts,
Office of the General Counsel

By: _____
Name: Leslie G. Miessner, Attorney
Date: _____

By: _____
Name: Grant Walker
Title: Senior Manager, Business Services
Date: _____

ATTEST:
Cindy Keck, Clerk of the Board

By: _____
Cindy Keck

**COUNTY OF EL DORADO, a political
subdivision of the State of California**

By: _____
Name: Rusty Dupray
Title: Chair, Board of Supervisors
Date: _____

EXHIBITS

Exhibit “A” – Legal Description of the Land

Exhibit “B” – Excluded Tangible Personal Property Inventory

Exhibit “C” – Form of Grant Deed

Exhibit “D” – [Form of Assignment of Intangible Personal Property, Rights, and Contracts]

Exhibit “E” – Site Plan of Real Property

Exhibit “F” – Floor Plan of Building

Exhibit “G” – Court Parking Plan

Exhibit “H” –List of Disputes as of the Effective Date

Exhibit “I” – Categories of Property Disclosure Documents

Exhibit “J” – List of Service Contracts and Approved Service Contracts

Exhibit “K” – Form of Datedown Certificate

Exhibit “L” – Form of Memorandum of Transfer Agreement

Exhibit “M” – Form of Termination of Memorandum

Exhibit “N” – Copy of Section 70324 of the Act