

Facility #09-B-01; Building Name: Building "C;"
Building Address: 2850 Fairlane Court, Placerville, CA 95667

PRINT DATE: September 16, 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**

TABLE OF CONTENTS

	Page
1. PURPOSE.....	1
2. BACKGROUND.....	1
3. DEFINITIONS	1
4. RESPONSIBILITIES AFTER TRANSFER.....	7
4.1 Transfer of Responsibility	7
4.2 General Responsibilities After Transfer.....	7
4.3 Specific Responsibilities After Transfer	7
4.3.1 Utilities	7
4.3.2 Property Insurance and Risk Allocation	7
4.3.3 Responsibility for Operation	7
4.3.4 Parking.....	7
4.3.5 Security-Related Areas	7
4.3.6 Telephone Services.....	8
4.3.7 Service Contracts	8
4.3.8 Correspondence	8
4.3.9 County Facilities Payments	8
4.3.10 Personal Property.....	8
4.3.11 Adjustments	8
4.3.12 Bonded Indebtedness	8
4.3.13 Relief from Section 70311 Obligations	9
4.3.14 No Material Changes	9
5. CLOSING.....	9
5.1 The Closing Date.....	9
5.1.1 Closing Documents.....	9
5.1.2 Time for Signature of TOR Closing Documents.....	10
5.2 Conditions for Closing	10
5.2.1 Conditions for the Benefit of the AOC.....	10
5.2.2 Conditions for the Benefit of the County	10
5.3 Delivery of Signed Agreement and Closing Documents	10
5.4 Delivery of Possession	11
6. COUNTY FACILITIES PAYMENT.....	11
6.1 Amount of County Facilities Payment.....	11
6.1.1 State Department of Finance Approval	11
6.2 County Facilities Payment Obligation	11
7. REPRESENTATIONS AND WARRANTIES	11
7.1 The County’s Representations and Warranties	12
7.1.1 Good Standing	12
7.1.2 Authority	12

TABLE OF CONTENTS

(continued)

	Page
7.1.3	Due Execution and Delivery..... 12
7.1.4	No Conflict 12
7.1.5	Title to Real Property..... 12
7.1.6	Title to Personal Property 13
7.1.7	List of Service Contracts 13
7.1.8	No Disputes 13
7.1.9	No Vending Contracts 13
7.1.10	No Violations of Law 13
7.1.11	Full and Complete Disclosure 13
7.1.12	No Condemnation..... 13
7.1.13	No Environmental Violations..... 14
7.1.14	No Special Circumstances 14
7.2	AOC’s Representations and Warranties..... 14
7.2.1	Good Standing 14
7.2.2	Due Execution and Delivery..... 14
7.2.3	No Conflict 14
8.	INDEMNITIES 14
8.1	AOC’s Indemnities..... 14
8.1.1	AOC Breach..... 14
8.1.2	Representations and Warranties 15
8.2	County’s Indemnities 15
8.2.1	County Breach 15
8.2.2	Representations and Warranties 15
8.2.3	Pre-Closing Events 15
8.2.4	CERCLA..... 15
8.3	Indemnity Exclusions 15
9.	RIGHT TO AUDIT 15
10.	DEFAULT NOTICE AND CURE..... 16
11.	DISPUTE RESOLUTION 16
11.1	Unassisted Negotiation; Mediation 16
11.1.1	Initiation of Mediation..... 17
11.1.2	Selection of Mediator 17
11.1.3	Cost of Mediation 17
11.1.4	Date, Time, and Place of Mediation..... 18
11.1.5	Attendance at Mediation..... 18
11.1.6	Statements Before Mediation 18
11.1.7	Confidentiality 18
11.2	Referral to CFDR..... 18
12.	NOTICES 19
13.	SURVIVAL OF TERMS AND PROVISIONS 20

TABLE OF CONTENTS

(continued)

	Page
14. MISCELLANEOUS.....	21
14.1 Waivers.....	21
14.2 Force Majeure.....	21
14.3 Assignment.....	21
14.4 Binding Effect	21
14.5 Third Parties Benefited.....	21
14.6 Governing Law	21
14.7 Construction	21
14.8 Integration; Amendments	22
14.9 Incorporation By Reference	22
14.10 Severability.....	22
14.11 Further Assurances	22

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 Building “C.”

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

“**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.

“**Bonded Indebtedness**” means “bonded indebtedness”, as defined in section 70301(a) of the Act, to which some or all of the Real Property is subject.

“**Bonded Indebtedness Documents**” means the agreements evidencing or securing the Bonded Indebtedness, including those listed on **Exhibit “T”** to this Agreement.

“**Building**” means the building on the Land occupied by the Court and the County, 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 Equipment does not include equipment exclusively serving only one Party’s Exclusive-Use Area.

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

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

“Closing Date” means the later to occur of: (1) the date on which this Agreement and the Closing Documents are signed by the last of the Parties to sign them, or (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 Closing Date will be the same as the Effective Date if this Agreement and the Closing Documents are signed on the same day.

“Closing Documents” means the documents listed in section 5.1 of this Agreement.

“Common Area” means the areas of the Real Property that are used non-exclusively and in common by, or for the common benefit of, the AOC, the County, and the Court, and includes (1) those portions of the Building depicted as Common Area on **Exhibit “B”** to this Agreement including hallways, stairwells, elevators, escalators, and restrooms that are not located in either Party’s Exclusive-Use Area, (2) foundations, exterior walls load-bearing walls, support beams, exterior windows, the roof, and other structural parts of the Building, (3) Building Equipment and Utilities that do not exclusively serve only one Party’s Exclusive-Use Area, (4) the Grounds Area; and (5) the Parking Area. The Common Area does not include any part of the Exclusive-Use Area of either Party, except for any Building Equipment that is located in a Party’s Exclusive-Use Area, but which serves areas in the Building other than that Party’s Exclusive-Use Area.

“Controller” means the State Controller.

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

“County Exclusive-Use Area” means the 45,016 square feet of the floor space in the Building, which are exclusively occupied and used by the County as depicted on **Exhibit “B”** to this Agreement. As of the Effective Date, the County Exclusive-Use Area constitutes 79.3 percent of the Total Exclusive-Use Area.

“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 Exclusive-Use Area” means the 11,745 square feet of the floor space of the Building that are exclusively occupied and used by the Court, as depicted on **Exhibit “B”** to this Agreement. As of the Effective Date, the Court Exclusive-Use Area constitutes 20.7 percent of the Total Exclusive-Use Area.

“Court Facility” means the Court Exclusive-Use Area, which includes all spaces, fixtures, and appurtenances described in section 70301(d) of the Act, including two rooms for holding superior court, one chamber for judges of the Court, two walk-up windows, one room for court reporters, two rooms for secure holding of prisoners attending Court sessions, one room for storage, and certain other areas required or used for Court functions, together with the non-exclusive right to occupy and use the Common Area, and the non-exclusive right to enter, exit, pass over, and pass through the Land as necessary to access the Court Facility and the Parking Area. 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 **Exhibit “B”** to this Agreement and are further described in the JOA.

“Court Parking” means a total of 70 surface parking spaces in the Parking Area for use by judges, Court staff and employees, and jurors, 66 of which are available for use by the Court on a first come, first served basis, and 4 of which are reserved solely for the Court’s designated use, all as shown on the parking plan attached as **Exhibit “C,”** 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 Common Area that: (1) significantly threatens the life, health, or safety of persons occupying or visiting the Building, (2) unreasonably interferes with, disrupts, or prevents either Party’s occupancy or use of the Real Property, or its ability to conduct its business operations in its Exclusive-Use Area, in an orderly, neat, clean, safe, and functional environment, (3) threatens the security of the employees, guests, invitees, or patrons of either Party, (4) threatens to diminish the value of either Party’s Exclusive-Use Area or the Common Area, or threatens to damage or destroy the business personal property of either Party or the Court located in the Building, (5) threatens the preservation of either Party’s files, records, and documents located in the Building, or (6) causes or exacerbates an unsafe,

unsanitary, unlawful, or non-functional condition affecting either Party's Exclusive-Use Area or the Common Area.

"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 "D"**.

"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.

"Hazardous Substance" means any material or substance regulated under any Environmental Law.

"Intangible Personal Property" means all of the County's: (1) agreements or arrangements for the operation of the systems or equipment in or exclusively serving the Court Facility; (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 Court Facility; (3) commitments, deposits, and rights for Utilities to the extent related to the Court Facility; (4) engineering, accounting, title, and other technical or business data concerning the Court Facility 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 Court Facility 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 Court Facility and the period on or after the 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 Court Facility or the Tangible Personal Property.

"JOA" means the document titled Joint Occupancy Agreement that is similar in form and content to the document attached to this Agreement as **Exhibit "F"**, and under which the County and the Court will occupy, and the Parties will operate, maintain, and repair the Real Property.

"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.

“**Managing Party**” means the County, which is the Party designated the “Managing Party” in the JOA.

“**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 Joint Occupancy Agreement that is similar in form and content to the document attached to this Agreement as **Exhibit “G”**.

“**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 Closing Date, and that cannot be terminated on 30 or fewer days notice.

“**Operation**” means the administration, management, maintenance, and repair of designated areas of the Real Property, and includes custodial services for the Common Area, but does not include custodial services for either Party’s Exclusive-Use Area, which are not governed by this Agreement or the JOA.

“**Parking Area**” means the parking lot on the Land that includes a total of 231 parking spaces, five of which parking spaces are designated for use by vehicles displaying a valid “disabled person” license or placard, all as shown on the parking plan attached as **Exhibit “C.”**

“**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.

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

“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 “E”**.

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

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

“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 Closing Date, owned by the County and located on or in, and used in or necessary to the use, occupancy, or Operation of the Court Exclusive-Use Area.

“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.

“Total Exclusive-Use Area” means, together, the Court Exclusive-Use Area and the County Exclusive-Use Area.

“Transfer of Responsibility” or **“Transfer”** 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 and the Act, except for those duties and liabilities expressly retained by the County under this Agreement and the Act, and Disputes that commenced, or are otherwise attributable to, claims that occurred or accrued before the TOR Closing Date, whether or not any such Disputes and related claims have been filed as of the TOR Closing Date.

“Utilities” means all of the utilities provided to the Court Exclusive-Use Area, except for telecommunications services provided by third parties.

4. RESPONSIBILITIES AFTER TRANSFER.

4.1 Transfer of Responsibility. On the Closing Date, the Transfer of Responsibility for the Court Facility from the County to the AOC will occur under this Agreement and the Closing Documents.

4.2 General Responsibilities After Transfer. Upon the completion of the 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 Closing Documents (including the JOA), or any other agreement.

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

4.3.1 Utilities. The County is responsible to provide all Utilities to the Court Facility. The County is solely responsible for all Utilities costs and expenses incurred prior to the Closing Date, and the Parties will comply with the JOA with respect to the payment of all Utilities costs and expenses incurred on and after the Closing Date.

4.3.2 Property Insurance and Risk Allocation. The County will maintain the property insurance coverage for the Real Property on the terms and conditions set forth in the JOA. Responsibility and liability for (i) damage to or destruction of the Real Property, (ii) bodily injury to or death of third parties in, on, or about the Real Property, and (iii) Disputes, are allocated as set forth in the JOA.

4.3.3 Responsibility for Operation. Under the JOA and this Agreement, the County is responsible for Operation of the Common Area, including the Building Equipment, on the terms set forth in the JOA and this Agreement. Operation of the Building Equipment includes maintaining and renewing all permits, certificates, approvals, and licenses required for lawful Operation of any of the Building Equipment.

4.3.4 Parking. The County will at all times provide, at the County's sole expense, the Court Parking to the AOC, for use by the Court and people attending to business and personal affairs in the Court Facility, on the terms set forth in the JOA. The Managing Party is responsible for the Operation of the Court Parking under the terms of the JOA.

4.3.5 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. The County will remain solely liable and responsible for all non-conforming code conditions of the holding cells. 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.

4.3.6 Telephone Services. Under this Agreement and the JOA, 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.

4.3.7 Service Contracts. The County will be responsible to manage and administer the Service Contracts, and the Parties will pay for all Service Contract fees and charges incurred on and after the Closing Date, under the terms of the JOA. The County is solely responsible for payment of all Service Contract fees and charges incurred before the Closing Date.

4.3.8 Correspondence. The County will direct all correspondence, invoices, and information related to Operation of the Court Facility for the period on and after the Closing Date to the AOC's Office of Court Construction and Management pursuant to section 12 of this Agreement.

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

4.3.10 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 that is Tangible Personal Property from the transfer and the failure to originally identify such property as Excluded Tangible Personal Property 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.

4.3.11 Adjustments. The Parties will make the appropriate adjustments for prorations 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 prorations 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 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.

4.3.12 Bonded Indebtedness. On the Effective Date, some or all of the Real Property is subject to Bonded Indebtedness. Notwithstanding the Transfer, the County will remain solely responsible to meet its obligations under the Bonded Indebtedness

Documents, and will not act or fail to act in a way that violates the Bonded Indebtedness Documents (“**BI Default**”). The County will promptly provide the AOC with a copy of any notice given or received by the County that concerns or alleges a BI Default. The AOC has the right, but not the obligation, to cure any County BI Default on behalf of the County. The County will provide full cooperation to the AOC in connection with any AOC cure of a County BI Default, and will promptly reimburse the AOC for any amounts spent by the AOC in curing a County BI Default. The AOC will exercise its rights under sections 70391 and 70392 of the Act in a way that does not (i) violate the terms of the Bonded Indebtedness Documents, (ii) cause any amounts payable by the County under the Bonded Indebtedness Documents to be includable in gross income for federal or State income tax purposes, or (iii) otherwise adversely affect the tax-exempt status of the Bonded Indebtedness. The County will promptly notify the AOC in writing if the County at any time believes that any act or omission by any State Party will or might result in a BI Default. If the Court is required to vacate the Court Facility through the operation or enforcement of the Bonded Indebtedness Documents, the County will comply with the provisions of section 70325(c) of the Act.

4.3.13 Relief from Section 70311 Obligations. Effective upon the Transfer, 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.

4.3.14 No Material Changes. The County will 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 under the terms of the JOA; or (2) do anything that would result in a change to the zoning or entitlements for use of the Real Property. Both Parties agree not to act or fail to act in any way that would result in the Real Property being subject to a Deficiency.

5. CLOSING

5.1 The Closing Date. The Closing will occur upon the later of (1) the signature of this Agreement and the 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 Closing Date will not be affected by the date of delivery of the signed originals of this Agreement or the Closing Documents.

5.1.1 Closing Documents. The Closing Documents are as follows:

- (a) the JOA;

- (b) the Memorandum;
- (c) the County Authorizing Document; and
- (d) any other documents required by Law, or reasonably requested by the State Parties or the County to complete the Transfer.

5.1.2 Time for Signature of TOR Closing Documents. The Parties will sign the Closing Documents on or as expeditiously as possible after the Effective Date. If the Closing Documents have not been signed within 10 days after the Effective Date, either Party that has signed the Closing Documents may terminate this Agreement and the Closing Documents upon five business days notice to the other Party, but if the 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.

5.2 Conditions for Closing. Neither Party will be obligated to consummate the Transfer unless the following conditions are satisfied or waived prior to the 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.

5.2.1 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 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 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.

5.2.2 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 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 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 Delivery of Signed Agreement and Closing Documents. The last Party to sign this Agreement and the Closing Documents must deliver, within three business days after signing, (i) to the County, one signed original of this Agreement and the Closing Documents, and (ii) to the AOC, all remaining signed originals of this Agreement and the

Closing Documents. The AOC will 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 and the Closing Documents.

5.4 Delivery of Possession. On the Closing Date, the County will deliver to the AOC custody and control over the Court Exclusive-Use Area and the non-exclusive right to occupy and use the Common Area, on the terms set forth in the JOA.

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 \$_____ [TBP], subject to adjustment under section 70362 of the Act. For the purpose of any adjustment to the County Facilities Payment required by the Act, the month of transfer shall be the month of the Effective Date of this Agreement.

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 Transfer, and the 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 Closing Date. Unless the Closing Date is on the first day of a fiscal quarter, the first installment of the County Facilities Payment will be prorated under section 4.3.11 for the period from the Closing Date to and including the last day of the fiscal quarter in which the 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 both the Effective Date and the 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 Closing Date, then that Party must immediately deliver written notice of the relevant information to the other Party, whereupon the Closing will be automatically delayed to allow the Party receiving that notice sufficient time to decide whether to proceed with the Closing.

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 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 the Bonded Indebtedness Documents, and other 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. There is no Personal Property owned by the County Parties, and except as provided in 4.3.10, to the extent the County has any right, title, or interest in or to any Personal Property, effective as of the 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 "H"** 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 any Disputes specifically listed in **Exhibit "D,"** 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 Vending Contracts. To the best of the County's knowledge, the County is not a party to any Occupancy Agreement under which any vending facilities, pay telephones, or other concessions are located in the Court Exclusive-Use Area.

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. To the best of County's knowledge, the holding cells used for the secure holding of prisoners attending court sessions are either in full compliance with Law, including the standards set forth in Titles 15 and 24 of the California Code of Regulations, or are exempt from compliance.

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 Special Circumstances. The County has not undertaken or commenced any Pending Projects in or around the Real Property, and the Building is not an “historical building” as defined in section 70301(f) of the Act.

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 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 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 which would prohibit, the AOC’s execution, delivery, or performance of its obligations under this Agreement or the Closing Documents.

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 section 7.2 of this Agreement or in the Closing Documents.

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 section 7.1 of this Agreement or in the Closing Documents;

8.2.3 Pre-Closing Events. Any event that occurred or Dispute that relates to claims that occurred or accrued prior to the Closing Date (whether or not any such Disputes and related claims have been filed as of the TOR Closing Date) related to the County's ownership, possession, Operation, or management of, or responsibility for, the Real Property; 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 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 or the JOA. 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, the 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 transaction 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 any other 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 Closing, and will thereafter remain in full force and effect: 3, 4.2, 4.3, 5.3, 5.4, and 6 through 14, inclusive. All other rights and duties hereunder will cease upon termination of this Agreement or

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 Court is an intended beneficiary 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

draftsperson. 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 Transfer, 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.

APPROVED AS TO FORM:

**ADMINISTRATIVE OFFICE OF THE
COURTS, OFFICE OF THE
GENERAL COUNSEL**

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

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

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” – Site Plan and Floor Plan

Exhibit “C” – Depiction of Court Parking

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

Exhibit “E” – Categories of Property Disclosure Documents

Exhibit “F” – Form of Joint Occupancy Agreement

Exhibit “G” – Form of Memorandum of Joint Occupancy Agreement

Exhibit “H” – List of Service Contracts

Exhibit “I” – List of agreements evidencing or securing the Bonded Indebtedness