

## **MEMORANDUM OF UNDERSTANDING FOR SITE ACCESS**

This Memorandum of Understanding for Site Access (this "MOU"), dated as of \_\_\_\_\_, 20\_\_, is made by and between the DEPARTMENT OF CORRECTIONS AND REHABILITATION OF THE STATE OF CALIFORNIA, (the "Department"), an entity of state government of the State of California, and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California (the "Participating County").

### **RECITALS**

WHEREAS, pursuant to Chapter 3.11 of Part 10b of Division 3 of Title 2 of the California Government Code, the State Public Works Board (the "Board") is authorized to finance the acquisition, design and construction of a new jail facility (the "Project") to be constructed on certain real property located in the County of San Bernardino (the "Site" and together with the Project, the "Facility"); and

WHEREAS, in order to facilitate the construction of the Project on the Site, the Participating County, and the Department, entered into a ground lease dated as of September 20, 2010 and recorded on October 12, 2010 in Official Records, County of San Bernardino as Document Number 2010-0421297 (the "Ground Lease") for the lease the Site by the Department and an Easement Agreement for the benefit of the Department dated as of September 20, 2010 and recorded on October 12, 2010 in Official Records, County of San Bernardino as Document Number 2010-0421296 (the "Easement Agreement"); and

WHEREAS, the Participating County's existing local jail facility ("the County Jail") is located on certain real property (the "County Site") adjacent to the Site; and

WHEREAS, in certain circumstances, during the term of the Ground Lease, the Participating County wishes to have access to the Site and the Department wishes to permit such access by the Participating County, as described herein; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and the Participating County hereby agree as follows:

1. Definitions. Unless otherwise required by the context, all capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Ground Lease.

2. Purpose and Scope.

2.1 Outside Area Access. The Department, as lessee under the Ground Lease, hereby agrees to permit the Participating County and its contractors, subcontractors, employees, lessees, licensees, permittees, successors and assigns access across, over and under all areas of

the Site that are outside of the structures associated with the Project for the purpose of: a) entry and exit to and from the County Site and the County Jail when there is no reasonable access to the County Site and the County Jail via adjacent public streets and roadways; b) maintenance and replacement of any existing utility wires, cables, conduits and pipes for “Utilities”, as defined below; and c) other purposes and uses necessary or desirable for the repair, operation and maintenance of the County Jail (the “Outside Area Access”); *provided, however*, that such Outside Area Access shall only be permitted when there is no reasonable access to such Utilities via the County Jail and the County Site; and *provided further*, that such Outside Area Access is subject to the security limitations set forth in Section 2.3 hereof; and *provided further* that such Outside Area Access shall only be permitted (i) during such times where the Department, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Sublease or (ii) during such times where the Board, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Lease. “Utilities” shall mean any and all existing wet and dry utilities (including sewer) necessary or required to service the County Jail, including, without limitation, all electrical, natural gas, water, sewer, telephone, data, and other telecommunications services.

2.2 Structure Access. The Department, as lessee under the Ground Lease, agrees to permit the Participating County and its contractors, subcontractors, employees, lessees, licensees, permittees, successors and assigns access across, over and under the structures associated with the Project for the sole purpose of repairing, replacing or maintaining Utilities, equipment or other physical components of the County Jail and for no other purpose whatsoever (the “Structure Access” and, together with the Outside Area Access, the “Site Access”), *provided, however*, that such Structure Access shall only be permitted if there is no reasonable access to the Utilities, equipment or other physical components of the County Jail requiring repair, replacement or maintenance via the County Site or the County Jail; and *provided further*, that such Structure Access is subject to the security limitations set forth in Section 2.3 hereof, and *provided further* that such Structure Access shall only be permitted (i) during such times where the Department, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Sublease or (ii) during such times where the Board, or its lessees, successors or assigns, is in possession of the Facility and is responsible for maintenance and repair of the Facility under the terms of the Facility Lease.

2.3 Security Limitations on Site Access. The Participating County hereby acknowledges that any Site Access permitted pursuant to this MOU will be expressly subject to the limitations and requirements imposed by the security measures then applicable to the Facility (the “Security Measures”). Prior to attempting to gain access under Sections 2.1 or 2.2 of this MOU, the Participating County or its respective lessees, successors or assigns must first contact the Department’s Chief Deputy Secretary of Facility Planning, Construction and Management or a previously identified designee to ensure that the proposed Site Access will be in compliance with the requirements of the then applicable Security Measures.

2.4 Terms Subject to Facility Lease. The terms of this MOU are subordinate and secondary to the terms of the Facility Lease.

3. Term of MOU. The term of this MOU shall be coextensive with the Term of the Ground Lease, as such Term may be extended or terminated as provided in the Ground Lease.

4. Entire Agreement; Amendments. This MOU contains the entire agreement of the parties relating to the Site Access. Any representations or modifications concerning this MOU shall be of no force and effect, excepting a subsequent modification in writing, signed by the Department and the Participating County and approved by the Board.

5. Counterparts. This MOU may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this MOU to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**COUNTY OF SAN BERNARDINO**

By: \_\_\_\_\_  
Name: Josie Gonzales  
Title: Chair, Board of Supervisors

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

By: \_\_\_\_\_  
Name: Christopher L. Lief  
Title: Assistant Administrative Secretary

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

By: \_\_\_\_\_  
Name: Deborah Hysen  
Title: Chief Deputy Secretary  
Facility Planning, Construction and  
Management

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

By: \_\_\_\_\_  
Name: Michael P. Butler  
Title: Assistant Section Chief  
Real Property Services Section