

Recording requested by  
and return to:

COUNTY OF SAN MATEO  
c/o Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, California 94105-2669

Attention: Mary A. Collins, Esq.

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**FACILITY LEASE**

by and between

**SAN MATEO COUNTY  
JOINT POWERS FINANCING AUTHORITY**

and the

**COUNTY OF SAN MATEO**

Related to

[\$215,000,000]  
San Mateo County Joint Powers Financing Authority  
Lease Revenue Bonds (Capital Projects),

2014 Series A  
(Maple Street Correctional Center)

Dated as of April 1, 2014

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THIS TRANSACTION IS EXEMPT FROM FILING FEES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 6103 AND  
TRANSFER TAXES PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 11928

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## FACILITY LEASE

This Facility Lease, dated as of April 1, 2014, by and between the SAN MATEO COUNTY JOINT POWERS FINANCING AUTHORITY (the "Authority"), a joint exercise powers authority duly organized and existing under and by virtue of the laws of the State of California, as sublessor, and the COUNTY OF SAN MATEO (the "County"), a body corporate and politic and a political subdivision of the State of California, as sublessee;

### WITNESSETH:

WHEREAS, the County has determined to finance the acquisition, construction and equipping of the Maple Street Correctional Center (as more particularly defined herein, the "2014 Project") as set forth in Exhibit D hereto (as the same may be changed from time to time, the "Capital Projects");

WHEREAS, the Authority intends to assist the County in financing the 2014 Project by issuing the San Mateo County Joint Powers Financing Authority Lease Revenue Bonds (Capital Projects), 2014 Series A (Maple Street Correctional Center) (the "2014 Series A Bonds");

WHEREAS, the County will lease to the Authority certain real property of the County on which the 2014 Project is to be constructed (as further defined herein, the "Demised Premises") pursuant to a Site Lease, dated as of April 1, 2014;

WHEREAS, the Authority will complete the construction of the 2014 Project on the Demised Premises (collectively, the "Facilities") with the proceeds of the 2014 Series A Bonds, pay rental under the Site Lease and make deposits to the Reserve Fund, the Interest Account and the Project Fund as provided in the Trust Agreement (hereinafter defined);

WHEREAS, the County will lease the Facilities from the Authority pursuant to the terms of this Facility Lease; and

WHEREAS, under this Facility Lease, the County will be obligated to make base rental payments to the Authority for the lease of the Facilities hereunder and the Authority will pledge such base rental payments for payment of the Bonds;

NOW, THEREFORE, in consideration of the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

#### SECTION 1.01. Definitions.

Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facility Lease, have the meanings herein specified, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement.

“**Additional Payments**” means all amounts payable to the Authority or the Trustee or any other person from the County as Additional Payments pursuant to Section 3.02 hereof.

“**Architects**” means the architects, engineers or designers of the Capital Projects, or any portion thereof, and any successor or successors to any thereof.

“**Authority**” means the San Mateo County Joint Powers Financing Authority, acting as sublessor hereunder and any surviving, resulting or transferee entity.

“**Base Rental**” and “**Base Rental Payments**” means all amounts payable to the Authority from the County as Base Rental Payments pursuant to Section 3.01 hereof.

“**Base Rental Payment Schedule**” means the schedule of Base Rental Payments payable to the Authority from the County pursuant to Section 3.01 hereof and attached hereto as Exhibit B.

“**Bonds**” means the 2014 Series A Bonds and all bonds issued to refund the 2014 Series A Bonds and, subject to agreement of the County, Additional Bonds of the Authority issued under the Trust Agreement.

“**Capital Projects**” means the various public capital improvements and projects, including, but not limited to the acquisition, construction, installation, implementation and equipping of the 2014 Project, as set forth in Exhibit D hereto, as the same may be amended from time to time by a Certificate of the County delivered to the Trustee, to be financed by a portion of the proceeds of the Bonds.

“**CSAC**” means the California State Association of Counties, and its successors.

“**Contractors**” means the [Construction Manager, and any other] construction contractor for any portion of the Capital Projects and any successor or successors to any thereof.

“**Construction Manager**” means [Sundt-Layton].

[**“Construction Manager At-Risk Insurance”** means and refers to the builders’ risk insurance in respect of the Project, in the amount of not less than \$125,996,677, payable to the Construction Manager.]

**“County”** means the County of San Mateo, California, a county organized and validly existing under the Constitution and general laws of the State.

**“Demised Premises”** The term “Demised Premises” means that certain real property situated in the County, described in Exhibit A attached hereto and made a part hereof, together with any additional real property added thereto by any supplement or amendment hereto, or any real property substituted for all or any portion of the Demised Premises in accordance with this Facility Lease and the Trust Agreement; subject, however, to any conditions, reservations and easements of record or known to the County.

**“Event of Default”** shall have the meaning specified in Section 6.01 hereof.

**“Facilities”** shall mean the Demised Premises and the 2014 Project to be constructed thereon, as described in Exhibit A hereto, or any County buildings, other improvements and facilities, added thereto or substituted therefor, or any portion thereof, in accordance with this Facility Lease and the Trust Agreement.

**“Facility Lease”** means this Facility Lease, as originally executed and recorded or as it may from time to time be supplemented, modified or amended pursuant to the provisions hereof and of the Trust Agreement.

**“Rentals”** means Base Rentals and Additional Payments and any other amounts due hereunder.

**“Rental Payment Period”** means the twelve month period commencing June 16 of each year and ending the following June 15, and the initial period commencing on the effective date hereof and ending the following [June 15].

**“Substitute Property”** shall have the meaning specified in Section 2.03 hereof.

**“Trust Agreement”** means the Trust Agreement, dated as of April 1, 2014, by and between the Trustee and the Authority and acknowledged by the County, as originally executed or as it may from time to time be supplemented, modified or amended by a Supplemental Trust Agreement entered into pursuant to the provisions thereof.

**“2014 Project”** means the acquisition, construction, installation, equipping and improvement of the Maple Street Correctional Center, and payment of any costs associated with financing of said project, as set forth in Exhibit D hereto, as the same may be amended in accordance with Section 3.07(b)(6) hereof.

**“2014 Series A Bonds”** means the Bonds designated “San Mateo County Joint Powers Financing Authority Lease Revenue Bonds (Capital Projects), 2014 Series A (Maple Street Correctional Center)” issued by the Authority under and pursuant to Section 2.01 of the Trust Agreement.

## ARTICLE II

### LEASE OF FACILITIES; TERM

SECTION 2.01. Lease of Facilities. The Authority hereby leases to the County, and the County hereby leases from the Authority, the Facilities, consisting of the Demised Premises and the 2014 Project to be constructed thereon, subject, however, to all easements, encumbrances, and restrictions that exist at the time of the commencement of the term of this Facility Lease, as defined in Section 2.02 hereof. The County hereby agrees and covenants during the term of this Facility Lease that, except as hereinafter provided, it will use the Facilities for public and County purposes so as to afford the public the benefits contemplated by this Facility Lease.

SECTION 2.02. Term; Occupancy; Construction. (a) The term of this Facility Lease shall commence on the date of recordation of this Facility Lease in the office of the County Recorder of San Mateo County, State of California, or on June 15, 2014, whichever is earlier, and shall end on the date specified in Exhibit C hereto, unless such term is extended or sooner terminated as hereinafter provided. If on such date, the Base Rental Payments and all other amounts then due hereunder with respect to the Facilities, shall not be fully paid, or if the rental payable hereunder shall have been abated at any time and for any reason, then the term of this Facility Lease with respect to the Facilities shall be extended until the Base Rental Payments attributable to the Facilities and all other amounts then due hereunder with respect to the Facilities, shall be fully paid, except that the term of this Facility Lease shall in no event be extended beyond the maximum extension date identified in Exhibit C hereto. If prior to such date, the Base Rental Payments or all the Bonds payable therefrom and all other amounts then due hereunder, shall be fully paid, or provision therefor made, the term of this Facility Lease shall end ten (10) days thereafter or upon written notice by the County to the Authority, whichever is earlier.

(b) Occupancy of 2014 Project. It is contemplated that the County will take possession of the Facilities on or before [December 1, 2015]. If the 2014 Project shall be substantially completed before such date, the County shall take possession of the Facilities upon such substantial completion evidenced either by a certificate of completion by the County or by the occupancy by the County of the 2014 Project.

(c) Construction Abatement. If the Authority, for any reason whatsoever, cannot deliver possession of the 2014 Project to the County by the date indicated above, this Facility Lease shall not be void or voidable, nor shall the Authority be liable to the County for any loss or damage resulting therefrom; but in that event the rent payable hereunder with respect to the 2014 Project shall be abated proportionately, in the proportion which the construction cost of the part or parts of the 2014 Project not yet delivered to the County bears to the aggregate construction cost of the 2014 Project, with respect to the period between the expected completion date of such part of the 2014 Project and the time when the Authority delivers possession.

SECTION 2.03. Substitution. The County and the Authority may substitute real property as part of the Facilities for purposes of this Facility Lease (“Substitute Property”), but only after the County shall have filed with the Authority and the Trustee, all of the following:



(a) Executed copies of the Facility Lease or amendments thereto containing the amended description of the Facilities to reflect the Substitute Property.

(b) A Certificate of the County with copies of the Facility Lease or the Site Lease, if needed, or amendments thereto containing the amended description of the Facilities to reflect the Substitute Property stating that such documents have been duly recorded in the official records of the County Recorder of the County.

(c) A Certificate of the County, stating that the County intends to use and maintain the Substitute Property for at least the remaining term of the Bonds, and that the annual fair rental value of the Substitute Property will be at least equal to the 100% of the maximum amount of Base Rental Payments becoming due in the then current year or in any subsequent year during the term of the Bonds.

(d) A Certificate of the County stating that, based upon review of such instruments, certificates or any other matters described in such Certificate of the County, the County has good merchantable title to the Facilities which will constitute the Facilities after such substitution. The term "Good Merchantable Title" shall mean such title as is satisfactory and sufficient for the needs and operations of the County.

(e) A Certificate of the County stating that such substitution does not adversely affect the County's use and occupancy of the Facilities [and that such Substitute Property is essential to the performance of the governmental functions of the County].

(f) An Opinion of Counsel stating that such substitution (i) complies with the terms of the Constitution and laws of the State and of the Trust Agreement and (ii) will not in and of itself cause the interest on the Bonds to be included in gross income for federal income tax purposes.

### ARTICLE III

#### RENTAL PAYMENTS; USE OF PROCEEDS

SECTION 3.01. Base Rental Payments. The County agrees to pay to the Authority, as Base Rental Payments for the use and occupancy of the Facilities (subject to the provisions of Sections 3.04, 3.06 and 7.01 of this Facility Lease) annual rental payments comprised of the principal components, and semi-annual interest components in accordance with the Base Rental Payment Schedule attached hereto as Exhibit B and made a part hereof. The County is hereby directed to pay all such Base Rental Payments directly to the Trustee for application as provided in the Trust Agreement. Base Rental Payments shall be calculated on an annual basis, for each Rental Payment Period, and each annual Base Rental shall be divided into two interest components, due on December 15 and June 15, and one principal component, due on June 15, except that the first Rental Payment Period commences on the date of recordation of this Facility Lease and ends on [June 15, 2014] and shall have only an interest component payable June 15, 2014. Each Base Rental Payment installment shall be payable two (2) Business Days before its due date. The interest components of the Base Rental Payments shall be paid by the County as and constitute interest paid on the principal components of the Base Rental

Payments to be paid by the County hereunder, computed on the basis of a 360-day year composed of twelve 30-day months. Each annual payment of Base Rental (to be payable in installments as aforesaid) shall be for the use of the Facilities following the completion of the construction of the 2014 Project for the twelve month period commencing on the June 16 of the period in which such installments are payable. Prior to the expected occupancy of the 2014 Project on or before February 1, 2016, Base Rental Payments are payable from proceeds of the Bonds on deposit in the Interest Account under the Trust Agreement.

If the term of this Facility Lease shall have been extended pursuant to Section 2.02 hereof, Base Rental Payment installments shall continue to be due on December 15 and June 15 in each year, and payable prior thereto as hereinabove described, continuing to and including the date of termination of this Facility Lease. Upon such extension of this Facility Lease, the County shall deliver to the Trustee a Certificate setting forth the extended rental payment schedule, which schedule shall establish the principal and interest components of the Base Rental Payments so that the principal components will in the aggregate be sufficient to pay all unpaid principal components with interest components sufficient to pay all unpaid interest components plus interest.

If at any time the Base Rental shall not have been paid by the County when due, for any reason whatsoever, and no other source of funds shall have been available to make the payments of principal and interest on the Bonds, the principal and interest components of the Base Rental shall be recalculated by the County to reflect interest on the unpaid Base Rental Payments as provided in Section 3.04. Upon request by the Authority or the Trustee, a revised Exhibit B to this Facility Lease shall be prepared by the County and supplied to the Authority and the Trustee reflecting such recalculation.

SECTION 3.02. Additional Payments. The County shall also pay such amounts (herein called the “Additional Payments”) as shall be required by the Authority for the payment of all costs and expenses incurred by the Authority in connection with the execution, performance or enforcement of this Facility Lease, or any pledge of Base Rental payable hereunder, the Trust Agreement, its interest in the Facilities and the lease of the Facilities to the County, including but not limited to payment of all fees, costs and expenses and all administrative costs of the Authority related to the Facilities, including, without limiting the generality of the foregoing, salaries and wages of employees, all expenses, compensation and indemnification of the Trustee payable by the Authority under the Trust Agreement, fees of auditors, accountants, attorneys or architects, and all other necessary administrative costs of the Authority or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Bonds or of the Trust Agreement; but not including in Additional Payments amounts required to pay the principal of or interest on the Bonds.

Such Additional Payments shall be billed to the County by the Authority or the Trustee from time to time, together with a statement certifying that the amount billed has been paid by the Authority or by the Trustee on behalf of the Authority, for one or more of the items above described, or that such amount is then payable by the Authority or the Trustee for such items. Amounts so billed shall be paid by the County to the billing party within 30 days after receipt of the bill by the County. The County reserves the right to audit billings for Additional

Payments although exercise of such right shall in no way affect the duty of the County to make full and timely payment for all Additional Payments.

The Authority has issued and may in the future issue bonds and has entered into and may in the future enter into leases to finance capital improvements other than the Capital Projects. The administrative costs of the Authority shall be allocated among the facilities subject to such other lease agreements and the Facilities, as hereinafter in this paragraph provided. The fees of the Trustee under the Trust Agreement, and any other expenses directly attributable to the Facilities shall be included in the Additional Payments payable hereunder. The fees of any trustee or paying agent under any indenture securing bonds of the Authority or any trust agreement other than the Trust Agreement, and any other expenses directly attributable to any facilities other than the Facilities, shall not be included in the administrative costs of the Facilities and shall not be paid from the Additional Payments payable hereunder. Any expenses of the Authority not directly attributable to any particular lease of the Authority shall be equitably allocated among all such leases, including this Facility Lease, in accordance with sound accounting practice. In the event of any question or dispute as to such allocation, the written opinion of an independent firm of certified public accountants, employed by the Authority to consider the question and render an opinion thereon, shall be a final and conclusive determination as to such allocation. The Trustee may conclusively rely upon the Written Request of the Authority, with the approval of the County Manager, Assistant County Manager, the Trustee of the County, or a designee of any such office, or a duly authorized representative of the County, endorsed thereon, in making any determination that costs are payable as Additional Payments hereunder, and shall not be required to make any investigation as to whether or not the items so requested to be paid are expenses related to the lease of the Facilities.

SECTION 3.03. [Fair Rental Value](#). Such payments of Base Rental Payments and Additional Payments for each rental period during the term of this Facility Lease shall constitute the total rental for said Rental Payment Period and shall be paid by the County in each Rental Payment Period for and in consideration of the right of use and occupancy of, and continued quiet use and enjoyment of, Demised Premises and, following completion of construction, the Facilities during each such period for which said rental is to be paid. The parties hereto have agreed and determined that such total rental payable for each Rental Payment Period represents the fair rental value of the Facilities for each such period. In making such determination, consideration has been given to the value of the Facilities, costs of acquisition, design, construction and financing of the Facilities, other obligations of the parties under this Facility Lease, the uses and purposes which may be served by the Facilities and the benefits therefrom which will accrue to the County and the general public.

SECTION 3.04. [Payment Provisions](#). Each installment of rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority at the corporate trust office of the Trustee in St. Paul, Minnesota, or such other place as the Authority shall designate. Any such installment of rental accruing hereunder which shall not be paid when due and payable under the terms of this Facility Lease shall bear interest at the rate of twelve percent (12%) per annum, or such lesser rate of interest as may be required by law, from the date when the same is due hereunder until the same shall be paid. Notwithstanding any dispute between the Authority and the County, the County shall make all rental payments when due without deduction or offset of any kind and shall not withhold any

rental payments pending the final resolution of such dispute. In the event of a determination that the County was not liable for said rental payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent rental payments due hereunder or refunded at the time of such determination. Amounts required to be deposited by the County with the Trustee pursuant to this Section on any date shall be reduced to the extent that amounts on deposit in the Revenue Fund, the Interest Account or the Principal Account are available therefor.

All payments received shall be applied first to the interest components of the Base Rental Payments due hereunder, then to the principal components of the Base Rental Payments due hereunder and thereafter to all Additional Payments due hereunder, but no such application of any payments which are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

Rental is subject to abatement as provided in Section 3.06.

Nothing contained in this Facility Lease shall prevent the County from making from time to time contributions or advances to the Authority for any purpose now or hereafter authorized by law, including the making of repairs to, or the restoration of, the Facilities in the event of damage to or the destruction of the Facilities.

SECTION 3.05. [Appropriations Covenant](#). The County covenants to take such action as may be necessary to include all such Base Rental Payments and Additional Payments due hereunder in its annual budgets, to make necessary annual appropriations for all such Base Rental Payments and Additional Payments as shall be required to provide funds in such year for such Base Rental Payments and Additional Payments. The County will deliver to the Authority and the Trustee within sixty (60) days of adoption of the County budget, copies of the portion of the budget as adopted which appropriates all moneys necessary for the payment of Base Rental Payments and Additional Payments hereunder. The covenants on the part of the County herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County to carry out and perform the covenants and agreements in this Facility Lease agreed to be carried out and performed by the County.

The Authority and the County understand and intend that the obligation of the County to pay Base Rental Payments and Additional Payments hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the County, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the County. Base Rental Payments and Additional Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise legally available for the purpose of paying Base Rental Payments and Additional Payments or other payments due hereunder as consideration for use of the Facilities. This Facility Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The County has not pledged the full faith and credit of the County, the State of California or any agency or

department thereof to the payment of the Base Rental Payments and Additional Payments or any other payments due hereunder.

SECTION 3.06. Rental Abatement. The Base Rental Payments and Additional Payments shall be abated proportionately, during any period in which by reason of any damage or destruction or defect in title (other than by condemnation which is hereinafter provided for) there is substantial interference with the use and occupancy of the Facilities by the County, in the proportion in which the cost of that portion of the Facilities rendered unusable bears to the cost of the whole of the Facilities. Such abatement shall continue for the period commencing with such damage or destruction or defect in title and ending with the substantial completion of the work of repair or reconstruction or resolution of the defect. In the event of any such damage, destruction or defect, this Facility Lease shall continue in full force and effect and shall be extended pursuant to Section 2.02 hereof, and the County waives any right to terminate this Facility Lease by virtue of any such damage, destruction or defect. Notwithstanding the foregoing, to the extent that moneys are available for the payment of Base Rental Payments in any of the funds and accounts established under the Trust Agreement (except the Reserve Fund), Base Rental Payments shall not be abated as provided above but, rather, shall be payable by the County as a special obligation payable solely from said funds and accounts. Base Rental Payments by the County shall commence upon use and occupancy of the Facilities as provided in Section 2.02(b).

SECTION 3.07. Use of Proceeds; Construction of 2014 Project. (a) Use of Proceeds. The parties hereto agree that the proceeds of the 2014 Series A Bonds will be used to finance the 2014 Project, to pay the Site Lease rental, to fund the Interest Account and the Reserve Fund, and to pay the costs of issuing the 2014 Series A Bonds and incidental and related expenses.

The Authority hereby agrees to construct the 2014 Project from the proceeds of the 2014 Series A Bonds and to appoint the County as the agent to the Authority to provide for such construction. The Authority and the County agree that the Capital Projects will be constructed in accordance with the plans and specifications prepared by the designers of the Capital Projects and approved by the County.

(b) Construction of 2014 Project. The Authority hereby agrees to construct the 2014 Project and hereby appoints the County as its agent to construct the 2014 Project. The County for good and valuable consideration hereby accepts such appointment further represents and warrants as follows:

1. The County has heretofore approved the plans and specifications for the 2014 Project and has satisfied all State approval, environmental and construction permit requirements applicable thereto.

2. The County has entered into a Construction Manager At-Risk contract for the construction of the 2014 Project, providing for the construction of the 2014 Project, which contract identifies a construction completion date of [August 1, 2015 (subject to extension)] at a cost of \$[125,996,677] based on a scope of work determined as of October 13, 2013.

3. The County has commenced construction of the 2014 Project.

4. The Authority and the County agree that the 2014 Project has been and will be constructed in accordance with the plans and specifications prepared by the Architects and approved by the County and any other authorities having jurisdiction. The Authority and the County further agree that the 2014 Project will be substantially completed in accordance with said plans and specifications within the time limits set forth in said construction contract.

5. The County agrees that upon substantial completion of the 2014 Project it will take possession of and occupy throughout the term of this Facility Lease, subject to substitution pursuant to Section 2.03, the 2014 Project and the Demised Premises under the terms and provisions of this Facility Lease. Such substantial completion shall be evidenced either by a certificate of completion by the County or by the occupancy by the County of the 2014 Project. The time within which the Contractor is required to complete the 2014 Project shall be extended for a period equal to any extensions of time to which the Contractor is entitled under the construction contract and any delays in construction resulting from other causes and events not within the reasonable control of the Contractor or of the Authority.

6. The County may alter the 2014 Project or issue change orders altering the construction contract plans and specifications during the course of construction, if such changes do not materially reduce or diminish the capacity, adaptability or usefulness of the 2014 Project, and the Authority agrees to cooperate fully with the County to cause such change orders to be implemented. Before the Authority shall issue any such change orders which, together with all other change orders, would increase the aggregate cost of construction of the 2014 Project above the moneys available or to be available for such purpose in the Project Fund, or delay completion of the 2014 Project beyond the date set forth above, the County shall arrange with the Authority to pay the increased cost resulting from such change orders, or to pay the Base Rental Payments to become due and payable after the dates set forth in Section 2.02(b), until such time as the 2014 Project shall be scheduled to be completed, and, shall deposit funds sufficient to pay such increased cost or such Base Rental Payments, as the case may be, with the Trustee.

## ARTICLE IV

### MAINTENANCE; ALTERATIONS AND ADDITIONS

SECTION 4.01. Maintenance and Utilities. During such time as the County is in possession of the Facilities, all maintenance and repair, both ordinary and extraordinary, of the Facilities shall be the responsibility of the County, which shall at all times maintain or otherwise arrange for the maintenance of the Facilities in good condition, and the County shall pay for or otherwise arrange for the payment of all utility services supplied to the Facilities, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Facilities resulting from ordinary wear and tear or want of care on the part of the County or any assignee or sublessee thereof or any other cause and shall pay for or otherwise arrange for the payment of all



insurance policies required to be maintained with respect to the Facilities. In exchange for the rental herein provided, the Authority agrees to provide only the Facilities. The County waives the benefits of subsections 1 and 2 of Section 1932 and Section 1933(4) of the California Civil Code, but such waiver does not limit any of the rights of the County under the terms of this Facility Lease.

In the event the County shall fail to keep the Facilities in good repair and working order or shall fail to maintain any insurance required hereunder, the Authority may, but shall be under no obligation to, maintain and repair the Facilities or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by the Authority shall constitute Additional Payments hereunder, and the County covenants and agrees to pay such amounts so advanced by the Authority with interest thereon from the date advanced until paid as provided in Section 3.04.

SECTION 4.02. [Changes to the Facilities](#). Subject to Section 8.02 hereof, the County shall, at its own expense, have the right to remodel the Facilities or to make additions, modifications and improvements to the Facilities. All such additions, modifications and improvements shall thereafter comprise part of the Facilities and be subject to the provisions of this Facility Lease. Such additions, modifications and improvements shall not in any way damage the Facilities or cause them to be used for purposes other than those authorized under the provisions of state and federal law; and the Facilities, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Facilities immediately prior to the making of such additions, modifications and improvements.

SECTION 4.03. [Installation of County's Equipment](#). The County and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Facilities. All such items shall remain the sole property of such party, in which neither the Authority nor the Trustee shall have any interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Facilities resulting from the installation, modification or removal of any such items. Nothing in this Facility Lease shall prevent the County from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Facilities.

## ARTICLE V

### INSURANCE

SECTION 5.01. [Fire and Extended Coverage Insurance](#). The County shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Facility Lease, (but during the period of construction of the Facilities only if such insurance is not provided by a Contractor under a Construction Contract [or if the Construction Manager At-Risk Insurance is no longer effective]) insurance through CSAC or otherwise from a reputable carrier against loss or damage to any structures constituting any part of the Facilities by

fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance and sprinkler system leakage insurance, but earthquake insurance, if any, will be provided at the discretion of the County. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the greater of (a) the replacement cost (without deduction for depreciation) of all structures constituting any part of the Facilities, excluding the cost of excavations, of grading and filling, and of the land or (b) the aggregate principal amount of the Base Rental Payments outstanding (except that such insurance may be subject to deductible clauses for any one loss of not to exceed \$250,000 or comparable amount adjusted for inflation, or, in the alternative, shall be in an amount and in a form sufficient (together with moneys held under the Trust Agreement), in the event of total or partial loss, to enable the County to prepay all or any part of the Base Rental Payments then unpaid, pursuant to Section 7.02 hereof and to redeem outstanding Bonds.

In the event of any damage to or destruction of any part of the Facilities, caused by the perils covered by such insurance, the Authority, except as hereinafter provided, shall cause the proceeds of such insurance to be utilized for the repair, reconstruction or replacement of the damaged or destroyed portion of the Facilities, and (pursuant to Section 5.04 of the Trust Agreement) the Trustee shall hold said proceeds separate and apart from all other funds, in a special fund to be designated the "Insurance and Condemnation Fund," to the end that such proceeds shall be applied to the repair, reconstruction or replacement of the Facilities to at least the same good order, repair and condition as they were in prior to the damage or destruction, insofar as the same may be accomplished by the use of said proceeds. The Trustee shall permit withdrawals of said proceeds from time to time as provided in the Trust Agreement. Alternatively, the Authority, with the written consent of the County, and if the proceeds of such insurance together with any other moneys then available for the purpose (including allocable portions of the Reserve Fund) are sufficient to redeem an aggregate principal amount of outstanding Bonds, equal to the amount of Base Rental attributable to the portion of the Facilities so destroyed or damaged (determined by reference to the proportion which the cost of such portion of the Facilities bears to the cost of the Facilities), may elect not to repair, reconstruct or replace the damaged or destroyed portion of the Facilities and thereupon shall cause said proceeds to be used for the redemption of outstanding Bonds pursuant to the provisions of the Trust Agreement.

The Authority and the County shall promptly apply for Federal disaster aid or State of California disaster aid in the event that the Facilities are damaged or destroyed as a result of an earthquake occurring at any time. Any proceeds received as a result of such disaster aid shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Facilities, or, at the option of the County and the Authority, to enable the County to prepay all or any part of the Base Rental Payments then unpaid, pursuant to Section 7.02 hereof, and to redeem outstanding Bonds if such use of such disaster aid is permitted.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the County may provide a self insurance or plan of protection if and to the extent such self insurance method or plan of protection shall afford reasonable coverage for the risks required to be insured against, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public



entities in the State of California other than the County. So long as such method or plan is being provided to satisfy the requirements of this Facility Lease, there shall be filed annually with the Trustee a statement of an actuary, insurance consultant or other qualified person (which may be the Risk Manager of the County), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable coverage for the risks required to be insured against. There shall also be filed a Certificate of the County setting forth the details of such substitute method or plan. In the event of loss covered by any such self insurance method, the liability of the County hereunder shall be limited to the amounts in the self insurance reserve fund or funds created under such method.

SECTION 5.02. [Liability Insurance](#). Except as hereinafter provided, the County shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Facility Lease, a standard comprehensive general liability insurance policy or policies in protection of the Authority and its members, directors, officers, agents and employees and the Trustee, insuring said parties against all direct or contingent loss or liability for damages for personal injury, death or property damage occasioned by reason of the operation of the Facilities, with minimum liability limits of \$1,000,000 per occurrence and \$3,000,000 in aggregate and \$5,000,000 excess liability, such policy to be obtained through CSAC, a joint powers authority or otherwise from a reputable carrier. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance carried by the County.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the County may provide self insurance or plan of protection or participate in a joint powers authority or other program providing pooled insurance to the extent such self insurance method or plan of protection shall afford reasonable protection to the Authority, its members, directors, officers, agents and employees and the Trustee, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State of California other than the County. So long as such method or plan is being provided to satisfy the requirements of this Facility Lease, there shall be filed annually with the Trustee a statement of an actuary, independent insurance consultant or other qualified person (which may be the Risk Manager of the County), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable protection to the Authority, its members, directors, officers, agents and employees and the Trustee against loss and damage from the hazards and risks covered thereby. There shall also be filed a Certificate of the County setting forth the details of such substitute method or plan.

SECTION 5.03. [Rental Interruption or Use and Occupancy Insurance](#). The County shall procure or cause to be procured and maintain or cause to be maintained, (but during the period of construction of the 2014 Project only if such insurance is not provided by a Contractor under a construction contract referred to in Section 3.07 hereof or in the corresponding section of any amendment hereto) rental interruption or use and occupancy insurance to cover loss, total or partial, of the rental income from or the use of the Facilities as the result of any of the hazards covered by the insurance required by Section 5.01 hereof in an amount at least equal to the maximum Base Rental Payments coming due and payable during any two consecutive Fiscal Years during the remaining term of this Facility Lease, such policy to

be obtained through CSAC or otherwise from a reputable carrier. Any proceeds of such insurance shall be used by the Trustee to reimburse to the County any rental theretofore paid by the County under this Facility Lease attributable to such structure for a period of time during which the payment of rental under this Facility Lease is abated, and any proceeds of such insurance not so used shall be applied as provided in Section 3.01 (to the extent required for the payment of Base Rental) and in Section 3.02 (to the extent required for the payment of Additional Payments) and any remainder shall be treated as Revenue under the Trust Agreement. The County shall not be entitled to self-insure for rental interruption insurance.

SECTION 5.04. [Worker's Compensation](#). The County shall also maintain worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure its employees against liability for compensation under the California Labor Code, as applicable to Counties, or any act hereafter enacted as an amendment or supplement thereto. As an alternative, such insurance may be maintained as part of or in conjunction with any other insurance carried by the County. Such insurance may be maintained by the County in the form of self-insurance.

SECTION 5.05. [Title Insurance](#). The County shall obtain, for the benefit of the Authority and the Trustee, upon the execution and delivery of this Facility Lease, title insurance on the Facilities, in an amount equal to the aggregate principal amount of the 2014 Series A Bonds, issued by a company of recognized standing duly authorized to issue the same, subject only to Permitted Encumbrances.

SECTION 5.06. [Insurance Proceeds; Form of Policies](#). All policies of insurance from third-party carriers required by Section 5.02 shall name the County, the Authority and the Trustee, and all policies of insurance required by Section 5.05 shall name the Authority and the Trustee, as insured. All policies of insurance from third-party carriers required by Section 5.01 shall contain a lender's loss payable endorsement in favor of the Trustee substantially in accordance with the form approved by the Insurance Services Office and the California Bankers Association. The Trustee shall, to the extent practicable, collect, adjust and receive all moneys which may become due and payable under the policies obtained pursuant to Sections 5.01, 5.03 and 5.05 and shall apply the proceeds of such insurance as provided in Sections 5.01 and 5.03. All policies of insurance required by this Facility Lease shall provide that the Trustee shall be given thirty (30) days notice of each expiration thereof or any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the County. The County shall pay when due the premiums for all insurance policies required by this Facility Lease.

SECTION 5.07. [Annual Certificates](#). The County will deliver to the Authority and the Trustee no later than August in each year a written Certificate of an officer of the County stating whether such policies satisfy the requirements of this Facility Lease, setting forth the insurance policies then in force pursuant to this Article, the names of the insurers which have issued the policies, the amounts thereof and the property and risks covered thereby, and, if any self-insurance program is being provided, the annual report of an actuary, independent insurance consultant or other qualified person containing the information required for such self-

insurance program and described in Sections 5.01, 5.02 and 5.04. Delivery to the Trustee of the certificate under the provisions of this Section shall not confer responsibility upon the Trustee as to the sufficiency of coverage or amounts of such policies. If so requested in writing by the Trustee, the County shall also deliver to the Trustee certificates or duplicate originals or certified copies of each insurance policy described in such schedule.

SECTION 5.08. [Performance Bonds for Construction](#). The County shall maintain performance, labor and material payment bonds for each construction contract with respect to the 2014 Project in the full amount of each contract naming the Authority, the County and the Trustee as obligee and the contractor as principal; [provided, that so long as the Construction Manager At-Risk Insurance is in effect, the County shall not be required to maintain such performance bonds].

## ARTICLE VI

### DEFAULTS AND REMEDIES

SECTION 6.01. [Defaults and Remedies](#). (a) If (i) the County shall fail to pay any rental payable hereunder when the same becomes due, time being expressly declared to be of the essence of this Facility Lease or (ii) the County shall fail to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the County (other than as referred to in (i) for a period of sixty (60) days after notice of the same has been given to the County by the Authority or the Trustee (or if the County notifies the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60 day period, the failure will not constitute an Event of Default if the County commences to cure the failure within such 60 day period and thereafter diligently and in good faith cures such failure in a reasonable period of time), or upon the happening of any of the events specified in subsection (b) of this Section (any such case above being an “Event of Default”), the County shall be deemed to be in default hereunder and it shall be lawful for the Authority and the Trustee to exercise any and all remedies available pursuant to law or granted pursuant to this Facility Lease. Upon any such default, the Authority, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Facility Lease in the manner hereinafter provided on account of default by the County, notwithstanding any re-entry or re-letting of the Facilities as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Facilities and remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and place such personal property in storage in any warehouse or other suitable place located within the County of San Mateo, California. In the event of such termination, the County agrees to surrender immediately possession of the Facilities, without let or hindrance, and to pay the Authority all damages recoverable at law that the Authority may incur by reason of default by the County, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Facilities and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay rent or to deliver up possession of the Facilities given pursuant to law nor any entry or re-entry by the Authority nor any proceeding in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or

obtaining possession of the Facilities nor the appointment of a receiver upon initiative of the Authority to protect the Authority's interest under this Facility Lease shall of itself operate to terminate this Facility Lease, and no termination of this Facility Lease on account of default by the County shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Authority shall have given written notice to the County of the election on the part of the Authority to terminate this Facility Lease. The County covenants and agrees that no surrender of the Facilities or of the remainder of the term hereof or any termination of this Facility Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

(2) Without terminating this Facility Lease, (i) to collect each installment of rent as it becomes due and enforce any other terms or provision hereof to be kept or performed by the County, regardless of whether or not the County has abandoned the Facilities, or (ii) to exercise any and all rights of entry and re-entry upon the Facilities. In the event the Authority does not elect to terminate this Facility Lease in the manner provided for in subparagraph (1) hereof, the County shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the County and, if the Facilities are not re-let, to pay the full amount of the rent to the end of the term of this Facility Lease or, in the event that the Facilities are re-let, to pay any deficiency in rent that results therefrom; and further agrees to pay said rent and/or rent deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration), notwithstanding the fact that the Authority may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified, and notwithstanding any entry or re-entry by the Authority or suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such entry or re-entry or obtaining possession of the Facilities. Should the Authority elect to enter or re-enter as herein provided, the County hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the County to re-let the Facilities, or any part thereof, from time to time, either in the Authority's name or otherwise, upon such terms and conditions and for such use and period as the Authority may deem advisable, and to remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and to place such personal property in storage in any warehouse or other suitable place located in the County of San Mateo, California, for, to the extent permitted by law, the account of and at the expense of the County, and the County, to the extent permitted by law, hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Facilities and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The County agrees that the terms of this Facility Lease constitute full and sufficient notice of the right of the Authority to re-let the Facilities and to do all other acts to maintain or preserve the Facilities as the Authority deems necessary or desirable in the event of such re-entry without effecting a surrender of this Facility Lease, and further agrees that no acts of the Authority in effecting such re-letting shall constitute a surrender or termination of this Facility Lease irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the County the right to terminate this Facility Lease shall vest in the Authority to be effected in the sole and exclusive manner provided for in sub-paragraph (1) hereof. The County further waives the right to any rental obtained by the Authority in excess of the rental herein specified and

hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-letting the Facilities or any part thereof. The County further agrees, to the extent permitted by law, to pay the Authority the reasonable cost of any alterations or additions to the Facilities necessary to place the Facilities in condition for re-letting immediately upon notice to the County of the completion and installation of such additions or alterations.

The County hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Facilities as herein provided and all claims for damages that may result from the destruction of or injury to the Facilities and all claims for damages to or loss of any property belonging to the County, or any other person, that may be in or upon the Facilities.

(b) If (1) the County's interest in this Facility Lease or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the Authority, as hereinafter provided for, or (2) the County or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the County asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the County's debts or obligations, or offers to the County's creditors to effect a composition or extension of time to pay the County's debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the County's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against the County, or if a receiver of the business or of the property or assets of the County shall be appointed by any court, except a receiver appointed at the instance or request of the Authority, or if the County shall make a general or any assignment for the benefit of the County's creditors, or (3) the County shall abandon or vacate the Facilities, then the County shall be deemed to be in default hereunder.

(c) The Authority shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the Authority shall have failed to perform such obligations within sixty (60) days or such additional time as is reasonably required to correct any such default after notice by the County to the Authority properly specifying wherein the Authority has failed to perform any such obligation. In the event of default by the Authority, the County shall be entitled to pursue any remedy provided by law.

(d) In addition to the other remedies set forth in this Section, upon the occurrence of an event of default as described in this Section, the Authority shall be entitled to proceed to protect and enforce the rights vested in the Authority by this Facility Lease and under the Site Lease or by law or by equity. The provisions of this Facility Lease and the duties of the County and of its trustees, officers or employees shall be enforceable by the Authority by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Authority shall have the right to bring the following actions:

(1) Accounting. By action or suit in equity to require the County and its trustees, officers and employees and its assigns to account as the trustee of an express trust.

(2) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority.

(3) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce the Authority's rights against the County (and its board, officers and employees) and to compel the County to perform and carry out its duties and obligations under the law and its covenants and agreements with the County as provided herein.

The exercise of any rights or remedies under this Facility Lease shall not permit acceleration of Base Rental Payments.

Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Authority to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation by the Authority of the Facilities. If any statute or rule of law validly shall limit the remedies given to the Authority hereunder, the Authority nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the Authority shall prevail in any action brought to enforce any of the terms and provisions of this Facility Lease, the County agrees to pay a reasonable amount as and for attorney's fees incurred by the Authority in attempting to enforce any of the remedies available to the Authority hereunder, whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

SECTION 6.02. Waiver. Failure of the Authority to take advantage of any default on the part of the County shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Authority to insist upon performance by the County of any term, covenant or condition hereof, or to exercise any rights given the Authority on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Facility Lease.

## ARTICLE VII

### EMINENT DOMAIN; PREPAYMENT

SECTION 7.01. Eminent Domain. If the whole of the Facilities or so much thereof as to render the remainder unusable for the purposes for which it was used by the County shall be taken under the power of eminent domain, the term of this Facility Lease shall cease as

of the day that possession shall be so taken. If less than the whole of the Facilities shall be taken under the power of eminent domain and the remainder is usable for the purposes for which it was used by the County at the time of such taking, then this Facility Lease shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the rental due hereunder in an amount equivalent to the amount by which the annual payments of principal and interest on the Outstanding Bonds will be reduced by the application of the award in eminent domain to the redemption of outstanding Bonds. So long as any of the Bonds shall be Outstanding, any award made in eminent domain proceedings for taking the Facilities or any portion thereof shall be paid to the Trustee and applied to the prepayment of the Base Rental Payments as provided in Section 7.02. Any such award made after all of the Base Rental Payments and Additional Payments have been fully paid, or provision therefor made, shall be paid to the to the County.

SECTION 7.02. [Prepayment](#). (a) The County shall prepay on any date from insurance (including proceeds of title insurance) and eminent domain proceeds, to the extent provided in Sections 5.01 and 7.01 hereof (provided, however, that in the event of partial damage to or destruction of the Facilities caused by perils covered by insurance, if in the judgment of the Authority the insurance proceeds are sufficient to repair, reconstruct or replace the damaged or destroyed portion of the Facilities, such proceeds shall be held by the Trustee and used to repair, reconstruct or replace the damaged or destroyed portion of the Facilities, pursuant to the procedure set forth in Section 5.01 for proceeds of insurance), all or any part of Base Rental Payments then unpaid so that the aggregate annual amounts of Base Rental Payments which shall be payable after such prepayment date shall be as nearly proportional as practicable to the aggregate annual amounts of Base Rental Payments unpaid prior to the prepayment date (taking into account the reduction in Base Rental allocable to future interest on the Bonds that are redeemed), at a prepayment amount equal to the redemption payment of the maximum amount of Bonds, including the principal thereof and the interest thereon to the date of redemption, plus any applicable premium redeemable from such proceeds.

(b) If all requirements of Section 10.01 of the Trust Agreement have been satisfied, the County may prepay, from any source of available funds, all or any portion of Base Rental Payments by depositing with the Trustee moneys or securities as provided in Article X of the Trust Agreement sufficient to defease Bonds corresponding to such Base Rental Payments when due; provided, if required by the Trust Agreement, that the County furnishes the Trustee with an Opinion of Counsel that such deposit will not cause interest on the Bonds to be includable in gross income for federal income tax purposes. The County agrees that if following such prepayment the Facilities are damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and shall not be entitled to any reimbursement of such Base Rental Payments.

(c) Before making any prepayment pursuant to this article, the County shall, within five (5) days following the event creating such right or obligation to prepay, give written notice to the Authority and the Trustee describing such event and specifying the date on which the prepayment will be made, which date shall be not less than forty-five (45) days from the date such notice is given.



(d) When (1) there shall have been deposited with the Trustee at or prior to the due dates of the Base Rental Payments or date when the County may exercise its option to purchase the Facilities or any portion or item thereof, in trust for the benefit of the Owners of the Bonds and irrevocably appropriated and set aside to the payment of the Base Rental Payments or option price, sufficient moneys and Permitted Investments described in subsection (1) of the definition thereof in the Trust Agreement, not redeemable prior to maturity, the principal of and interest on which when due will provide money sufficient to pay all principal, premium, if any, and interest on the Bonds to the due date of the Bonds or date when the County may exercise its option to purchase the Facilities, as the case may be; (2) all requirements of Section 10.01 of the Trust Agreement have been satisfied; and (3) an agreement shall have been entered into with the Trustee for the payment of its fees and expenses so long as any of the Bonds shall remain unpaid, then and in that event the right, title and interest of the Authority herein and the obligations of the County hereunder shall thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of the Authority and the obligation of the County to have such moneys and such Permitted Investments applied to the payment of the Base Rental Payments or option price) and the Authority's interest in and title to the Facilities or applicable portion or item thereof shall be transferred and conveyed to the County. In such event, the Authority shall cause an accounting for such period or periods as may be requested by the County to be prepared and filed with the Authority and evidence such discharge and satisfaction, and the Authority shall pay over to the County as an overpayment of Base Rental Payments all such moneys or Permitted Investments held by it pursuant hereto other than such moneys and such Permitted Investments as are required for the payment or prepayment of the Base Rental Payments or the option price and the fees and expenses of the Trustee, which moneys and Permitted Investments shall continue to be held by the Trustee in trust for the payment of Base Rental Payments or the option price and the fees and expenses of the Trustee, and shall be applied by the Authority to the payment of the Base Rental Payments or the option price and the fees and expenses of the Trustee.

SECTION 7.03. [Sale of Personal Property](#). The County, in its discretion, may request the Authority to sell or exchange any personal property which may at any time constitute a part of the Facilities, and to release said personal property from this Facility Lease, if (a) in the opinion of the County the property so sold or exchanged is no longer required or useful in connection with the operation of the Facilities, (b) the consideration to be received from the property is of a value substantially equal to the value of the property to be released, and (c) if the value of any such property shall, in the opinion of the Authority, exceed the amount of \$100,000, the Authority shall have been furnished a certificate of an independent engineer or other qualified independent professional consultant (satisfactory to the Authority) certifying the value thereof and further certifying that such property is no longer required or useful in connection with the operation of the Facilities. In the event of any such sale, the full amount of the money or consideration received for the personal property so sold and released shall be paid to the Authority. Any money so paid to the Authority may, so long as the County is not in default under any of the provisions of this Facility Lease, be used upon the Written Request of the County either to prepay Base Rental pursuant to Section 7.02(c) or to purchase personal property, which property shall become a part of the Facilities leased hereunder. The Authority may require such opinions, certificates and other documents as it may deem necessary before permitting any sale or exchange of personal property subject to this Facility Lease or before



releasing for the purchase of new personal property money received by it for personal property so sold.

## ARTICLE VIII

### COVENANTS

SECTION 8.01. [Right of Entry](#). The Authority and its assignees shall have the right to enter upon and to examine and inspect the Facilities during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the Authority's or the County's rights or obligations under this Facility Lease, and (c) for all other lawful purposes.

SECTION 8.02. [Liens](#). In the event the County shall at any time during the term of this Facility Lease cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Facilities, the County shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the County in, upon or about the Facilities and shall keep the Facilities free of any and all mechanics' or materialmen's liens or other liens against the Facilities or the Authority's interest therein. In the event any such lien attaches to or is filed against the Facilities or the Authority's interest therein, the County shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the County desires to contest any such lien it may do so in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the County shall forthwith pay and discharge said judgment. The County agrees to and shall, to the maximum extent permitted by law, indemnify and hold the Authority, and the Trustee and their respective members, directors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the Facilities or the Authority's interest therein.

SECTION 8.03. [Quiet Enjoyment](#). The parties hereto mutually covenant that the County, by keeping and performing the covenants and agreements herein contained and not in default hereunder, shall at all times during the term of this Facility Lease peaceably and quietly have, hold and enjoy the Facilities without suit, trouble or hindrance from the Authority.

SECTION 8.04. [Authority Not Liable](#). The Authority and its members, directors, officers, agents and employees shall not be liable to the County or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Facilities. The County, to the extent permitted by law, shall indemnify and hold the Authority and its members, directors, officers, agents and employees, harmless from, and defend each of them against, any and all claims, liens and judgments arising from the operation of the Facilities, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on or about the Facilities

regardless of responsibility for negligence, but excepting the active negligence of the person or entity seeking indemnity.

SECTION 8.05. [Assignment and Subleasing](#). Neither this Facility Lease nor any interest of the County hereunder shall be mortgaged, pledged, assigned, sublet or transferred by the County by voluntary act or by operation of law or otherwise, except with the prior written consent of the Authority, which, in the case of subletting, shall not be unreasonably withheld; provided such subletting shall not affect the tax-exempt status of the interest on the Bonds. No such mortgage, pledge, assignment, lease or transfer shall in any event affect or reduce the obligation of the County to make the Base Rental Payments and Additional Payments required hereunder.

SECTION 8.06. [Title to Facilities](#). During the term of this Facility Lease, the Authority shall hold title to the 2014 Project and any and all additions which comprise fixtures, repairs, replacement or modifications thereof, except for those fixtures, repairs, replacements or modifications which are added thereto by the County and which may be removed without damaging the Facilities, and except for any items added to the Facilities by the County pursuant to Section 4.02 hereof. This provision shall not operate to the benefit of any insurance company if there is a rental interruption covered by insurance pursuant to Section 5.03 hereof. During the term of this Facility Lease, the Authority shall have a Leasehold interest in the Demised Premises, pursuant to the Site Lease.

Upon the termination or expiration of this Facility Lease (other than as provided in Section 6.01 or 7.01), title to the 2014 Project shall vest in the County pursuant to the Site Lease. The Authority shall execute such conveyances, deeds and other documents as may be necessary to evidence the ownership of the Facilities by the County and to clarify the title of the County on the record thereof.

SECTION 8.07. [Tax Covenants](#). The Authority and the County hereby covenant that they shall not take any action or inaction, or fail to take any action, or permit any action to be taken on their behalf or cause or permit any circumstances within their control to arise or continue, if such action or inaction would cause the interest on the Bonds to be included in gross income for federal income tax purposes. This covenant shall survive the payment in full of the Bonds.

If at any time the Authority or the County is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee under this Trust Agreement, the Authority or the County shall so instruct the Trustee in a Request of the Authority or the County accompanied by a supporting Opinion of Bond Counsel, and the Trustee shall take such action as may be directed in accordance with such instructions.

Notwithstanding any provisions of this Section, if the Authority or the County shall receive an Opinion of Bond Counsel to the effect that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds, the Authority and the County

may conclusively rely on such opinion in complying with the requirements of this Section and the Tax Certificate, and the covenants hereunder shall be deemed to be modified to that extent.

In furtherance of the covenants of the County and the Authority set forth above, the County will comply with the Tax Certificate and will instruct the Trustee in writing as necessary to comply with the Tax Certificate. The Trustee and the Authority may conclusively rely on any such written instructions, and the County hereby agrees to hold harmless the Trustee and the Authority for any loss, claim, damage, liability or expense incurred by the Authority and the Trustee for any actions taken by the Authority or the Trustee in accordance with such instructions.

SECTION 8.08. [Continuing Disclosure](#). The County hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Facility Lease, failure of the County to comply with the Continuing Disclosure Agreement shall not be considered an event of default hereunder; however, the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Holders of at least 25% aggregate principal amount of 2014 Series A Bonds Outstanding and provided satisfactory indemnification is provided to the Trustee, shall) or any Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to compel the County to comply with its obligations under this Section 8.08.

SECTION 8.09. [Taxes](#). The County shall pay or cause to be paid all taxes and assessments of any type or nature charged to the Authority or affecting the Facilities or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County shall be obligated to pay only such installments as are required to be paid during the term of this Facility Lease as and when the same become due.

The County shall also pay directly such amounts, if any, in each year as shall be required by the Authority for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines or interest arising out of any delay or failure by the County to pay any of the foregoing or failure to file or furnish to the Authority or the Trustee for filing in a timely manner any returns, hereinafter levied or imposed against the Authority or the Facilities, the rentals and other payments required hereunder or any parts thereof or interests of the County or the Authority or the Trustee therein by any governmental authority.

The County may, at the County's expense and in its name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority or the Trustee shall notify the County that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Facilities will be materially endangered or the Facilities, or any part thereof, will

be subject to loss or forfeiture, in which event the County shall promptly pay such taxes, assessments or charges or provide the Authority with full security and bond against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 8.10. Authority's Purpose. The Authority covenants that, prior to the discharge of this Facility Lease, it will not engage in any activities inconsistent with the purposes for which the Authority is organized.

SECTION 8.11. Purpose of Lease. The County covenants that during the term of this Facility Lease, except as hereinafter provided, (a) it will use, or cause the use of, the Facilities for public purposes and for the purposes for which the Facilities are customarily used, (b) it will not vacate or abandon the Facilities or any part thereof, and (c) it will not make any use of the Facilities which would jeopardize in any way the insurance coverage required to be maintained pursuant to Article V hereof.

## ARTICLE IX

### **DISCLAIMER OF WARRANTIES; RISK OF LOSS; VENDOR'S WARRANTIES; USE OF THE FACILITIES**

SECTION 9.01. Disclaimer of Warranties; Risk of Loss. THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE FACILITIES OR THE PROJECT OR WARRANTY WITH RESPECT THERETO. THE COUNTY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF THE FACILITIES OR THE PROJECT OR A DEALER THEREIN, THAT THE COUNTY LEASES THE FACILITIES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE COUNTY. In no event shall the Authority be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Facility Lease or the Project or the existence, furnishing, functioning or the County's use of any item or products or services provided for in this Facility Lease or with respect to the Project.

Subject to Section 3.06 hereof, the County, whether or not covered by insurance or self-insurance, hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Facilities or the Project from any cause whatsoever, and no such loss of or damage to or liability arising from the Facilities or the Project shall relieve the County of the obligation to make the Base Rental Payments, subject to Section 3.06 of this Facility Lease, or to perform any other obligation under this Facility Lease. Whether or not covered by insurance or self-insurance, the County hereby agrees to reimburse Authority (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Authority, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Facility Lease or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership

use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Facilities or the Project, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Facilities or the Project resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of County under or in connection with this Facility Lease or any material misrepresentation provided by County under or in connection with this Facility Lease. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Facility Lease or the termination of the term of this Facility Lease for any reason.

SECTION 9.02. [Vendor's Warranties](#). The Authority hereby irrevocably appoints the County its agent and attorney-in-fact during the term of this Facility Lease, so long as the County shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Facilities, which the Authority may have against the manufacturers, vendors and contractors of the Facilities. The County's sole remedy for the breach of such warranty, indemnification or representation shall be against the manufacturer or vendor or contractor of the Facilities and the Project, as applicable, and not against the Authority, nor shall such matter have any effect whatsoever on the rights and obligations of the Authority with respect to this Facility Lease, including the right to receive full and timely payments hereunder. The County expressly acknowledges that the Authority makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the manufacturer, vendor or contractor with respect to the Facilities and the Project.

SECTION 9.03. [Use of the Facilities](#). The County will not install, use, operate or maintain the Facilities improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Facility Lease. The County shall provide all permits and licenses, if any, necessary for the installation and operation of the Facilities. In addition, the County agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Facilities) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Facilities; provided, however, that the County may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Authority, adversely affect the estate of the Authority in and to the Facilities or its interest or rights under this Facility Lease.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.01. [Law Governing](#). This Facility Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exist.

SECTION 10.02. [Notices](#). All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests, agreements or promises or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid:

If to the County: County of San Mateo  
County Manager's Office  
400 County Center, 1st Floor  
Redwood City, California 94063-1663  
Attention: \_\_\_\_\_

If to the Authority: San Mateo County Joint Powers Financing Authority  
County Manager's Office  
400 County Center, 1st Floor  
Redwood City, California 94063-1663  
Attention: \_\_\_\_\_

If to the Trustee: U.S. Bank National Association  
60 Livingston Avenue  
St. Paul, Minnesota 55107  
Attention: Corporate Trust Services

or to such other addresses as the respective parties may from time to time designate by notice in writing. A copy of any such notice or other document herein referred to and deliver to any party shall also be delivered to the Trustee.

SECTION 10.03. [Validity and Severability](#). If for any reason this Facility Lease shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the Authority or by the County, or if for any reason it is held by such a court that any of the covenants and conditions of the County hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Facility Lease is and shall be deemed to be a lease under which the rentals are to be paid by the County annually in consideration of the right of the County to possess, occupy and use the Facilities, and all of the rental and other terms, provisions and conditions of this Facility Lease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

SECTION 10.04. [Net-Net-Net Lease](#). This Facility Lease shall be deemed and construed to be a "net-net-net lease" and the County hereby agrees that the rentals provided for herein shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.05. [Section Headings](#). All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Facility Lease.

SECTION 10.06. [Amendment or Termination](#). The Authority and the County may at any time agree to the amendment or termination of this Facility Lease; provided, however, that the Authority and the County agree and recognize that this Facility Lease is entered into in accordance with the terms of the Trust Agreement, and accordingly, that any such amendment or termination shall only be made or effected in accordance with and subject to the terms of the Trust Agreement.

SECTION 10.07. [Execution](#). This Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Facility Lease. It is also agreed that separate counterparts of this Facility Lease may separately be executed by the Authority and the County, all with the same force and effect as though the same counterpart had been executed by both the Authority and the County.

IN WITNESS WHEREOF, the Authority and the County have caused this Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

SAN MATEO COUNTY JOINT POWERS  
FINANCING AUTHORITY,  
as Sublessor

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

COUNTY OF SAN MATEO,  
as Sublessee

By \_\_\_\_\_  
Jim Saco  
Budget Director

Approved as to Form:

By \_\_\_\_\_  
County Counsel  
County of San Mateo



**EXHIBIT A**

**Description of the Demised Premises**

[legal description of site of Maple Street Correctional Center to be inserted]

The Facilities shall consist of the Demised Premises and the 2014 Project to be constructed thereon.

**EXHIBIT B**

**Base Rental Payment Schedule**

\_\_\_\_\_

\_\_\_\_\_

\* Payable two Business Days before due date.

**EXHIBIT C**

**Lease Term**

Facility

Term

Maximum Extension

June 15, 2043

June 15, 2053

**EXHIBIT D**

**Capital Projects Description**

“Capital Projects” means the various public capital improvements and projects, including, but not limited to the acquisition, installation, implementation and construction of certain projects of the County, specifically the 2014 Project described as follows:

[Description of Maple Street Correctional Center to be inserted]