TRANSFER AGREEMENT

BETWEEN THE JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS,
AND THE COUNTY OF ORANGE

FOR THE TRANSFER OF RESPONSIBILITY FOR COURT FACILITIES
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TRANSFER AGREEMENT

1. PURPOSE

The Judicial Council of California ("Council"), Administrative Office of the Courts (together, the "AOC"), and the County of Orange, California ("County"), set forth the terms and conditions for the transfer of responsibility for funding and operation of the trial court facilities commonly known as the Community Court.

2. BACKGROUND

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

3. DEFINITIONS

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

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

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

“Building” means the building located at 909 N. Main Street, Santa Ana, California 92701, containing in the aggregate 110,612 square feet of useable building floor space, on the Land in which the Court Facilities are located, all connected or related structures and improvements, and all Building Equipment.

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

“Closing” means the performance of all acts required to complete the Transfer of Responsibility under this Agreement and the Closing Documents.

“Closing Date” means the last date on which all of the following have occurred: (1) the date on which this Agreement and the Closing Documents are signed by the last
Party to sign them, (2) the date on which the county facilities payment for the Central Justice Center (defined in section 6, below) has been approved by the State Department of Finance, and (3) the date of the full execution of the transfer agreements, in accordance with section 70321(a) of the Act (i.e. by December 31, 2009), between the AOC and the County relating to the transfer of responsibility for the following court facilities: (a) Central Justice Center – Civil Complex Center (AOC Facility #30-A3), located at 751 W. Santa Ana Boulevard, Santa Ana, California 92701; (b) Central Justice Center (AOC Facility #30-A1), located at 700 Civic Center Drive West, Santa Ana, California 92701; and (c) Flower Street Parking Lot (AOC Facility #30-A5), located on the southeast corner of Civic Center Drive West and Flower Street in Santa Ana, California 92701.

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

“Common Area” means the areas of the Building that are used non-exclusively and in common by, or for the common benefit of, the County and the Court and includes (1) hallways, restrooms, and loading docks that are not located in either Party’s Exclusive-Use Area, (2) foundations, exterior walls, load-bearing walls, support beams, exterior windows, the roof, and other structural parts of the Building, (3) Building Equipment and Utilities that do not exclusively serve only one Party’s Exclusive-Use Area, and (4) any driveways, walkways, and other means of access over the Land and through the Building to the Court Exclusive-Use Area. The Common Area does not include any part of the Exclusive-Use Area of either Party.

“Controller” means the State Controller.

“County Authorizing Document” means a copy of a certified resolution evidencing that the County has taken all steps and obtained all approvals required to: (1) authorize the County Authorized Signatory to execute this Agreement and the Closing Documents on behalf of the County; and (2) authorize the County to perform its obligations under this Agreement and the Closing Documents.

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

“County Exclusive-Use Area” means the 89,421 square feet of the floor space of the Building, which is exclusively occupied and used by the County and depicted on Exhibit “B” to this Agreement. The County Exclusive-Use Area constitutes 92.05 percent of the Total Exclusive-Use Area as of the Effective Date.

“County Facilities Payment” means the payments the County must make to the Controller with respect to the Court Facilities under Article 5 of the Act.
“County Parties” means the County, its political subdivisions, and their respective officers, agents, and employees.

“Court” means the Superior Court of California for the County of Orange.

“Court Exclusive-Use Area” means the 7,727 square feet of the floor space of the Building, which is exclusively occupied and used by the Court and depicted on Exhibit “B” to this Agreement. The Court Exclusive-Use Area constitutes 7.95 percent of the Total Exclusive-Use Area as of the Effective Date.

“Court Facilities” means the Court Exclusive-Use Area, which includes all spaces, fixtures, and appurtenances described in section 70301(d) of the Act, one room for holding superior court, one chamber of the judge of the Court, rooms for attendants of the Court, two rooms for secure holding of prisoners attending Court sessions, one children’s waiting room, and certain other areas required or used for Court functions, together with the non-exclusive right to occupy and use the Common Area, and with the right to enter, exit, pass over, and pass through the Land as necessary to access the Court Facilities. A copy of a site plan depicting the location of the Building on the Land and a floor plan depicting the layout of the Court Facilities in the Building, are attached as Exhibit “B” to this Agreement and are further described in the JOA.

“Dispute” means each and every pending or threatened claim, liability, litigation, arbitration, mediation, administrative proceeding, settlement negotiation, or other dispute-resolution proceeding related to the Real Property that, if determined adversely to the County or the AOC, would have a Material Adverse Effect.

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

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

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

“Existing MOU” means that certain Memorandum of Understanding Regarding Community Court Construction Project at Santa Ana Courthouse Annex, dated as of November 20, 2007, by and among the AOC, County, and Court.

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

“JOA” means the document titled Joint Occupancy Agreement that the Parties will sign substantially concurrently with the Effective Date, and under which the County and the Court will occupy, and the Parties will operate and maintain, the Real Property.

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

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

“Material Adverse Effect” means any of (1) a material adverse change in (a) the condition, operations, or value of the Real Property, (b) the County’s use of, interest in, or right or title to, the Real Property, (c) the ability of the County to perform its obligations under this Agreement or the Closing Documents, or (d) the validity or enforceability of this Agreement or the Closing Documents; or (2) the imposition on the County of actual or contingent payment obligations in respect of the Real Property of $50,000 or more in the aggregate.

“Material Agreements” means any and all agreements, contracts, or understandings (whether written or unwritten) relating to the Real Property (1) for which termination requires advance notice by a period exceeding 30 calendar days, or (2) that obligate the County to make payment, or entitle the County to receive payment, exceeding $25,000 within any fiscal year.
“Memorandum” means the document titled Memorandum of Transfer and Joint Occupancy Agreements that is similar in form and content to the document attached to this Agreement as Exhibit “E.”

“Occupancy Agreement” means any agreement or arrangement that entitles a third party to occupy or use the Court Exclusive-Use Area for a period that continues after the Closing Date.

“Occupant” means any third party that occupies, possesses, or uses the Court Exclusive-Use Area under an Occupancy Agreement.

“Operation” means the administration, management, maintenance, and repair of designated areas of the Real Property, but does not include custodial services, which are not governed by this Agreement or the JOA.

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

“Pending Projects” means any pending maintenance project or other project under sections 70326(d) or 70331(c) of the Act.

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

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

“Provided Court Parking” means (i) one reserved parking space for use by the judge of the Court; and (ii) five reserved parking spaces for use by Court staff and employees, all of which are depicted on Exhibit “C” attached hereto, and which the County and the Court have agreed is parking of the same number, type, and convenience as made available for users of the Court on October 1, 2001.

“Real Property” means the Land and the Building.

“Service Contracts” means all contracts between the County and any third parties under which goods or services are provided with respect to the operations, maintenance, or repair of the Court Exclusive-Use Area, if any.
“Services MOU” means the document titled Memorandum of Understanding for the Provision of Services by the County to the Court effective July 1, 2008 by and between the County of Orange and the Superior Court of California, County of Orange, for the County’s provision of certain services, including security and telecommunications, to the Court, as amended from time to time.

“State” means the State of California.

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

“Tangible Personal Property” means any unaffixed item that is, on the Closing Date, located on or in, or used in or necessary to the use, occupancy, or operation of, the Court Exclusive-Use Area.

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

“Transfer of Responsibility” or “Transfer” means the County’s full and final grant, transfer, absolute assignment, and conveyance to the applicable State Parties, and the State Parties’ full and final acceptance and assumption of, entitlement to and responsibility for, all of the County’s rights, duties, and liabilities arising from or related to the Court Facilities under this Agreement, the Closing Documents, and the Act, except for those duties and liabilities expressly retained by the County under this Agreement and the Act, and Disputes related to facts or circumstances occurring prior to the Closing Date.

“Transition Date” means April 8 2010, which is the date on which the AOC will assume physical control over, funding, and operation of the Court Facilities following a transition period agreed upon by the County and the AOC, as provided in section 6.3 of this Agreement which date may be later than the Closing Date, but shall not affect either the Closing or the final approval of the County Facilities Payment as provided in the definition of Closing Date above.

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

“Vending Facilities” means those vending facilities (as defined in section 19626 of the California Welfare and Institution Code, as amended), if any, located in the Court Exclusive-Use Area and subject to a Vending Services Agreement.

“Vending Services Agreement” means any Occupancy Agreement for Vending Facilities, if any.
4. RESPONSIBILITIES AFTER TRANSFER.

4.1 Transfer of Responsibility. On the Closing Date, the Transfer of Responsibility for the Court Facilities from the County to the AOC will occur under this Agreement and the Closing Documents. Notwithstanding the foregoing, from the Closing Date until the Transition Date, the County will continue to perform the Operation of the Real Property, including the Court Exclusive-Use Area and the Common Area, at no cost to the State Parties.

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

4.3 Specific Responsibilities After Transfer. The Parties have the following specific rights, duties, and liabilities at all times on and after the Closing Date:

4.3.1 Operations of Real Property. The Parties shall be responsible for operations of the Real Property (including the Common Area and the Exclusive-Use Areas) pursuant to the terms of the JOA, which provides that the County, as Managing Party, is responsible for operation of the Common Area, including the Building Equipment. Operation of the Building Equipment includes maintaining and renewing all Equipment Permits required for lawful use of any of the Building Equipment.

4.3.2 Utilities. The County is responsible to provide all Utilities. The County is solely responsible for all Utilities costs and expenses incurred prior to the Closing Date, and the Parties will comply with the JOA with respect to the payment of Utilities costs and expenses incurred on and after the Closing Date. The Parties will comply with the Services MOU with respect to payment of fees and charges of third-party telecommunications providers incurred on and after the Closing Date.

4.3.3 Provided Court Parking. On and after the Closing Date, the County, at its sole cost and expense, shall provide to the Court the Provided Court Parking. After Transfer, if any of the Court Parking becomes unavailable for Court use in accordance with this section 4.3.3, the County will be responsible to provide, at no cost to the State Parties, alternate parking spaces of equal number, type, and convenience to the parking spaces that are no longer available.

4.3.4 Security Related Areas. Pursuant to the Services MOU, the County through the County’s Sheriff-Coroner Department will remain responsible for the secure entry, exit, transport, and holding of prisoners attending Court sessions to, from, in, and through the security-related areas of the Real Property, including the holding cells and secured corridors, on the terms set forth in the Services MOU. The County will remain...
solely liable and responsible for all non-conforming code conditions of any security-related areas of the Real Property not conforming to applicable laws affecting such security-related areas. This Agreement does not supersede, replace, or modify the Services MOU or any other agreement between the County and the Court with respect to security staffing for the Real Property.

4.3.5 IT/Telephone Services. The AOC and the County will be responsible for the Operation of the telecommunications and data equipment located in the Court Facilities, and for provision of telecommunications services to the Court in the Court Facilities, under the terms of the JOA and the Services MOU.

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

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

4.3.8 Personal Property. If either Party determines that there exists any Tangible Personal Property or Intangible Personal Property not previously transferred or assigned to the AOC, that Party will promptly provide to the other Party a notice that includes a reasonably-detailed, written description of that property. At the AOC’s request, the County will transfer, convey, or assign to the AOC any or all of the Tangible Personal Property or Intangible Personal Property described in that notice.

4.3.9 Adjustments. The Parties will make the appropriate adjustments for prorations or computations required by this Agreement or the Closing Documents as promptly as possible once accurate information becomes available evidencing that either Party is entitled to an adjustment. Any prorations will be based on a 365-day fiscal year. The Party entitled to the adjustment must make written demand on the other Party for the adjustment within one year after the Closing Date and provide a reasonably-detailed explanation of the basis for the demand and all supporting documentation. The Parties shall pay each other any corrected prorated or adjusted amounts within 90 days.

4.3.10 Limitations on Equity Rights; Equity Purchase Rights After Waiver Period. The Parties agree and acknowledge that for 35 years from the Closing Date (the “Waiver Period”) the County waives its rights under section 70344(b) of the Act in respect of the Building, and the Parties agree that any sale or other disposition of the Building, or any portions thereof, during the Waiver Period will occur only as mutually agreed upon by the Parties. In the event that section 70344(b) of the Act applies at any time after the Waiver Period, the Party that occupies 80% or more of the Building will
have the right to require the other Party to vacate on the terms of section 70344(b) of the Act and section 5.3 of the JOA. For purposes of determining whether a Party occupies 80% or more of the Building under section 70344(b) and section 5.3 of the JOA, the Parties agree that the percentage of occupancy will be calculated to equal the quotient of the Party’s combined square footage of the Party’s exclusive-use area plus the product of the Party’s Share (as provided in the JOA) multiplied by the total square footage of the Common Area, as the dividend, and the total square footage of the Building as the divisor. By way of example only, assume that the Party’s exclusive-use area is 73,166 square feet, the total Common Area square footage of the Building is 24,086, and the Party’s Share (as defined in the JOA) is 84.32%. The Party’s combined square footage of occupancy in the Building would be determined by adding 73,166 plus 20,309 (84.32% of 24,086) for a combined square footage equal to 93,475. The Party’s percentage of occupancy of the Building for purposes of this example only would be 84.32% (93,475 divided by the total square footage of the Building, 110,855).

4.3.11 Relief from Section 70311 Obligations. Effective upon the Transfer, the AOC confirms and agrees that the County will be and is relieved of any responsibility under section 70311 of the Act for providing to the Court those necessary and suitable court facilities currently located in the Building, except as specifically provided in the Act.

4.3.12 Occupancy Agreements. The AOC will be responsible for all Occupancy Agreements, but only to the extent that such Occupancy Agreements are either assigned to the AOC or entered into directly by any of the State Parties. The County shall remain responsible for all existing Occupancy Agreements which are either not assigned to the AOC or not entered into directly by a State Party, until such Occupancy Agreements terminate or expire; further, the County shall not extend the term of any such existing Occupancy Agreements not assigned to the AOC, without the prior written consent of the AOC, which consent shall not be unreasonably withheld. If, after the Closing Date, either Party discovers additional Occupancy Agreements affecting the Court Facilities, which one or both of the Parties were unaware of as of the Effective Date, or the Parties were aware of the existence of such Occupancy Agreements and the County neither terminated or assigned such Occupancy Agreements to the AOC prior to the Effective Date, then upon the request of the AOC, the County shall either assign those Occupancy Agreements to the AOC or terminate those Occupancy Agreements. Until an Occupancy Agreement is either assigned to the AOC or terminated, the County will remain responsible for any such Occupancy Agreement. To the extent that any Occupancy Agreement involves a Vending Facility, to the extent practical, the AOC and the County will work with the State’s Department of Rehabilitation (“DOR”) to ensure the continuity of vending services in the Building. Upon termination of an Occupancy Agreement, the County will return possession of those areas to the AOC that were occupied under the Occupancy Agreement. Until an Occupancy Agreement is either
assigned to the AOC or terminated, the County will remain responsible for any such Occupancy Agreement.

4.3.13 Service Contracts. Prior to the Closing Date, the County will provide written notice to the AOC of any Service Contracts affecting the Court Exclusive-Use Area that are known or discovered by the County. Upon the AOC’s receipt of such notice, the Parties will work together, diligently and in good faith, either to terminate such Service Contracts in a manner that avoids disruption to the operation of the Court Facilities, or, at the AOC’s request, to assign and transfer such Service Contracts to the AOC. If any Service Contracts affecting the Court Exclusive-Use Area cannot be assigned to the AOC, the Parties will, at the AOC’s request, work together to cause new Service Contracts with respect to the Court Exclusive-Use Area to be entered into in the name of the AOC. The County is solely responsible for all costs and expenses under all Service Contracts executed prior to the Closing Date until the assignment or termination of any such Service Contracts. For all other Service Contracts, the Parties will comply with the JOA with respect to the payment of the costs and expenses incurred on and after the Closing Date.

4.3.14 Intentionally Omitted.

4.3.15 Property Insurance and Risk Allocation. Responsibility and liability for (i) damage to or destruction of the Real Property, (ii) bodily injury to or death of third parties in, on, or about the Real Property, and (iii) Disputes, are allocated as set forth in the JOA.

4.3.16 No Material Changes. Subject to the terms of the JOA, the County, in its capacity as owner of title to the Real Property, will not: (1) transfer, agree to transfer, or enter into any agreement concerning the transfer or use of any right, title, or interest in the Real Property with any party other than the AOC; (2) do anything that would result in a change to the zoning or entitlements for use of the Real Property; or (3) act or fail to act in any way that results in the Real Property being subject to any new deficiency under section 70326(b) of the Act. Additionally, because the AOC does not hold title to the Real Property, it may be impractical or impossible for the AOC to exercise all of its rights with respect to maintenance, repair, replacement, or operation of the Court Exclusive-Use Area without the cooperation of the County acting in its capacity as the owner of the Real Property. In such instances, at the AOC’s reasonable request, the County will cooperate in good faith with the AOC to provide such assistance as the AOC may reasonably require to enable the AOC to exercise its rights and perform its duties with respect to the maintenance, repair, replacement, and operation of the Court Exclusive-Use Area.
5. CLOSING

5.1 Closing. The Closing will occur upon the Closing Date, and will not be affected by the date of delivery of the signed originals of this Agreement or the Closing Documents.

5.1.1 Closing Documents. The Closing Documents are as follows:

(a) the JOA;
(b) the Memorandum;
(c) the County Authorizing Document; and
(d) any other documents required by Law, or reasonably requested by the State Parties or the County to effect the Transfer of Responsibility.

5.1.2 Time for Signature for Closing Documents. The Parties will sign the Closing Documents on or as expeditiously as possible after the Effective Date. If the Closing Documents have not been signed within 20 days after the Effective Date, either Party that has signed the Closing Documents may terminate this Agreement and the Closing Documents upon 10 business days notice to the other Party, but if the Closing Documents are fully signed by the Parties prior to the end of the 10 business day period, any termination notice shall be of no force or effect.

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

5.1.4 Delivery of Possession. On the Closing Date, the County will deliver to the State Parties custody and control of, and responsibility for, the Court Exclusive-Use Area and the non-exclusive right to occupy and use the Common Area, subject to the terms of the JOA.

5.2 Conditions for Closing. Neither Party will be obligated to consummate the Transfer unless the following conditions are satisfied or waived prior to the Closing Date. The conditions for the benefit of the County may only be waived by the County, and the conditions for the benefit of the AOC may only be waived by the AOC.
5.2.1 Conditions for the Benefit of the AOC. All of the County’s representations and warranties in this Agreement must be accurate and complete in all material respects as though made on the Closing Date; the County must not have breached any of the County’s representations, warranties, or covenants in this Agreement; and there must be no County Event of Default under this Agreement nor any circumstance which, but for the passage of time or the giving of notice or both, would constitute a County Event of Default as of the Closing Date.

5.2.2 Conditions for the Benefit of the County. All of the AOC’s representations and warranties in this Agreement must be accurate and complete in all material respects as though made on the Closing Date; the AOC must not have breached any of the AOC’s representations, warranties, or covenants in this Agreement; and there must be no AOC Event of Default under this Agreement nor any circumstance which, but for the passage of time or the giving of notice or both, would constitute an AOC Event of Default as of the Closing Date.

6. COUNTY FACILITIES PAYMENT

The County Facilities Payment applicable to the Court Facilities has been consolidated with the county facilities payment applicable to the Central Justice Center (AOC Facility #30-A1), located at 700 Civic Center Drive West, Santa Ana, California 92701 (the “Central Justice Center”). Accordingly, the historical costs of Operation of the Court Facilities have been used to determine the county facilities payment that the County must pay under the Act in connection with the transfer of the Central Justice Center. As a result thereof, the County’s compliance with section 6 of the transfer agreement between the AOC and the County for the transfer of responsibility for and transfer of title to the Central Justice Center shall also fulfill the County’s obligation to pay the County Facilities Payment to the Controller under Article 5 of the Act with respect to the Court Facilities.

7. REPRESENTATIONS AND WARRANTIES

Each Party makes the representations and warranties in this section 7 to the other Party effective on each of the Effective Date and the Closing Date. Each Party will give written notice to the other within five business days of its discovery of any facts or circumstances that would render any information contained in that Party’s representations and warranties in this Agreement or any Closing Document incomplete, untrue, or misleading, but if a Party makes that discovery within seven calendar days prior to the Closing Date, then that Party must immediately deliver written notice of the relevant information to the other Party, whereupon the Closing will be automatically delayed to allow the Party receiving that notice sufficient time to decide whether to proceed with the Closing.
7.1 **The County’s Representations and Warranties.** The phrase “to the best of the County’s knowledge” or words of similar import, means the actual knowledge, after reasonable independent investigation and inquiry, of the County’s Deputy CEO for Government and Public Service and the County’s Director of Public Works, and the County represents that these are the persons within the County most knowledgeable with respect to the County’s representations and warranties.

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

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

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

7.1.4 **No Conflict.** This Agreement and the Closing Documents do not violate any provision of any agreement, obligation, or court order to which the County is a party or by which the County or any of its assets is subject or bound. No other action of any governmental agency or authority is required for, and the County has no actual knowledge of any Law in effect which would prohibit, the County’s execution, delivery, or performance of its obligations under this Agreement or the Closing Documents.

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

7.1.6 **Title to Personal Property.** After a reasonable and diligent search, the County has determined that none of the Personal Property is owned by the County Parties, and to the extent the County has any right, title, or interest in or to any Personal Property, effective as of the Closing Date, the County transfers, conveys, and quitclaims the same to the AOC.
7.1.7 No Disputes. To the best of the County’s knowledge, with the exception of any Disputes specifically listed in Exhibit “F”, there are no pending or threatened Disputes of any kind or character adversely affecting the Real Property, the County’s right, title, and interest in and to the Real Property, or the County’s right and ability to perform its obligations under this Agreement or the Closing Documents.

7.1.8 Occupancy Agreements. To the best of the County’s knowledge, there are no Occupancy Agreements affecting the Court Exclusive-Use Area.

7.1.9 No Violations of Law. The County has no actual knowledge of, nor has the County received any written notice from any State, federal, or other governmental authority relating to: (1) any violation of Law, whether or not appearing in public records, with respect to the Real Property, which violation has not been corrected to the satisfaction of the State, federal, or other governmental authority that issued the notice, or (2) any unrecorded restriction applicable to the Real Property. To the best of County’s knowledge, security-related areas of the Court Facilities, including but not limited to the holding cells located therein, are either in full compliance with Law, including the standards set forth in Titles 15 and 24 of the California Code of Regulations, or are exempt from compliance with those standards.

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

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

7.1.12 No Environmental Violations. Except as set forth in the Property Disclosure Documents or in any environmental assessments or investigations of the Real Property performed by the AOC, the County has no knowledge of the actual, threatened, or suspected presence of any Hazardous Substance, and there are no existing violations of Environmental Laws in, on, under, adjacent to, or affecting the Real Property nor is there any Hazardous Substance in, on, under, adjacent to, or affecting all or any portion of the Real Property, except for any Hazardous Substance used or held in conformity with Environmental Laws.
7.1.13 No Special Circumstances. There are no Pending Projects with respect to the Common Area or the Court Exclusive-Use area, the Real Property is not subject to “bonded indebtedness” as defined in section 70301(a) of the Act and the Building is not a “historical building” as defined in section 70301(f) of the Act.

7.1.14 Service Contracts. To the best of the County’s knowledge, the County has provided to the AOC all Service Contracts related to the Court Exclusive-Use Area.

7.2 AOC’s Representations and Warranties. The phrase “to the best of the AOC’s knowledge,” or words of similar import, means the actual knowledge, after reasonable independent investigation and inquiry, of the Director, Office of Court Construction and Management, who the AOC hereby represents is the person within the AOC most knowledgeable with respect to the matters described in the AOC’s representations and warranties.

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

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

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

8. INDEMNITIES

8.1 AOC’s Indemnities. Subject to section 8.3 below, the AOC indemnifies, defends, and holds harmless the County Parties, with counsel reasonably acceptable to the County, against all claims, demands, liabilities, damages, attorney fees, costs, expenses, and losses (individually and collectively, “Indemnified Loss” for purposes of this section 8) asserted against the County Parties arising from the matters described below in this section 8.1:

8.1.1 Representations and Warranties. Any breach of or inaccuracy in the AOC’s representations and warranties contained in section 7.2 of this Agreement or in the Closing Documents;
8.1.2 Breach. Any breach by the AOC of its obligations set forth in this Agreement.

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

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

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

8.2.3 Pre-Transfer Events. Any event occurring before the Closing Date, or which is otherwise attributable to the time prior to the Closing Date, related to the County’s ownership, possession, operation, management, maintenance, and repair of, or responsibility for, the Real Property;

8.2.4 CERCLA. Under section 70393(d) of the Act, any liability imposed on the State Parties pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (42 U.S.C. sections 9601 et seq.), or related provisions, for conditions that existed in, on, or under the Real Property at the time of the Closing whether or not known to the County;

8.2.5 Pending Project. Any actions or claims related to or arising from the Pending Project(s) (including claims by County’s general contractor, stop notice actions, etc.) even if the action or claim was filed subsequent to the Closing Date.

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

9. RIGHT TO AUDIT

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

10. DEFAULT NOTICE AND CURE

Upon a Party’s breach or default of any provision of this Agreement, the non-defaulting Party will provide written notice to the defaulting Party of the breach or default (“Default Notice”). Upon receipt of the Default Notice, the defaulting Party will have 30 calendar days to cure the breach or default described in the Default Notice and to provide evidence of that cure to the non-defaulting Party. If the breach or default is not capable of cure within the 30 calendar day period, then no breach or default can be deemed to have occurred by reason of the failure to cure so long as the defaulting Party promptly begins and diligently and continuously performs the cure to completion within a reasonable time period, not to exceed 90 calendar days from commencement of the cure (“Cure Period”). If the defaulting Party does not provide evidence of the cure to the non-defaulting Party within the Cure Period, then the defaulting Party will be deemed to have committed an “Event of Default,” and the non-defaulting Party will have the right, but not the obligation, to pursue its rights with respect to resolution of disputes under section 11 of this Agreement. The Parties may at any time mutually agree to commence the dispute resolution procedures in section 11 of this Agreement before the end of the Cure Period.

11. DISPUTE RESOLUTION

11.1 Unassisted Negotiation; Mediation. In the event of a dispute between the Parties relating to performance of the Parties’ obligations under this Agreement, or any aspect of the Transfer transactions contemplated in this Agreement, the County Executive Officer and an Assistant Director of the AOC’s Office of Court Construction and Management will meet to discuss a resolution to the dispute. If the Parties are not able to resolve their dispute within 30 calendar days through that unassisted negotiation, they will attempt to resolve the dispute by mediation under this section 11.1. If the dispute concerns a matter within the jurisdiction of the Court Facilities Dispute Resolution Committee (“CFDRC”), established by section 70303 of the Act, the Parties must first
mediate the dispute before a Party may commence a dispute resolution proceeding before the CFDRC.

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

11.1.2 **Selection of Mediator.** Within 10 calendar days after delivery to the requesting Party of the Mediation Response, the Parties will attempt in good faith to agree upon a neutral mediator to preside over the mediation. If the Parties are not able to agree upon a neutral mediator within 10 calendar days after delivery to the requesting Party of the Mediation Response, the Parties must apply to the American Arbitration Association (“AAA”) for selection of a neutral mediator to mediate the dispute. The Parties’ application to AAA must be filed in accordance with the regulations and rules then in effect, and appropriate to the transactions set forth in this Agreement and must include copies of the Mediation Request and the Mediation Response. The mediator must be a person knowledgeable in the provisions of the Act and with a reasonable degree of experience and expertise handling disputes involving governmental entities. The mediator must have no current or prior involvement working for or against either Party in the negotiations between the Parties related to the Act or any of the court facility transfers provided for in the Act, and will discharge his or her duties impartially and as a neutral, independent participant to the mediation process to assist the Parties to achieve a settlement and compromise of their dispute, taking into consideration the relevant facts, applicable Law and the pertinent provisions of any relevant agreement between the County and the AOC. The selection of a mediator by AAA will be final and binding on the Parties.
11.1.3 **Cost of Mediation.** The Parties will share equally in payment of all costs of the mediation, including the compensation of the mediator. The Parties and the mediator must reach a written agreement regarding the mediator’s compensation and expenses before the mediation is commenced.

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

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

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

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

11.2 **Resolution of Claims Remaining After Mediation.** After compliance with the terms of section 11.1 of this Agreement, the Parties shall proceed as follows in respect of any dispute that remains unresolved: (i) if the unresolved dispute involves any of the matters set forth in sections 70303(c)(1) through (5) of the Act, the Parties will refer the dispute to the CFDRC for hearing and recommendation to, and decision by, the
Director of Finance, pursuant to the Act and the regulations and rules adopted by the CFDRC; or (ii) if the unresolved dispute does not involve any of the matters set forth in sections 70303(c)(1) through (5) of the Act, then the Parties may proceed to resolve the dispute in any manner permitted at Law or in equity.

12. **NOTICES**

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

If to the AOC:

Administrative Office of the Courts  
Office of Court Construction and Management  
Attention: Portfolio Administration Analyst,  
Southern Regional Office  
455 Golden Gate Avenue, 8th Floor  
San Francisco, CA 94102  
Voice: 415-865-4986  
Fax: 415-865-8885

With a copy to:

Administrative Office of the Courts  
Office of Court Construction and Management  
Attention: Manager, Real Estate  
455 Golden Gate Avenue  
San Francisco, CA 94102  
Voice: 415-865-4048  
Fax: 415-865-8885
In addition, all audit requests and notices by the County relating to termination of this Agreement or alleged breach or default by the AOC of this Agreement or any other Closing Document must also be sent to:

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

If to the County:

County of Orange  
County Executive Office  
Attention: Deputy CEO, Government and Public Services  
P.O. Box 22031  
333 W. Santa Ana Boulevard  
Santa Ana, CA 92701  
Voice: (714) 834-3028  
Fax: (714) 834-4790

With a copy to:

County of Orange  
Office of County Counsel  
Attention: Assistant County Counsel  
P.O. Box 1379  
333 W. Santa Ana Boulevard  
Santa Ana, California 92701  
Voice: (714) 834-3300  
Fax: (714) 834-2359

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

13. SURVIVAL OF TERMS AND PROVISIONS

The following sections of this Agreement will survive the Closing and will remain in full force and effect notwithstanding the Transfer: 3, 4.2, 4.3, and 6 through 14, inclusive. All other rights and duties hereunder will cease upon termination of this Agreement or Closing. In the event of the termination of this Agreement, all documents, other tangible objects, and information containing or representing confidential or proprietary information disclosed by one Party to the other, and all copies that are in the possession or under the control of the other Party will be and remain the property of the Party that disclosed the documents, objects, and information, and all those documents and tangible objects will be promptly returned to the Party that disclosed them at that Party’s written request.

14. MISCELLANEOUS

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

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

14.3 Assignment. Neither Party may assign this Agreement in whole or in part, whether by operation of law or otherwise, to any other entity, agency, or person without the prior written consent of the other Party. Even if that consent is given, any assignment made in contravention of any Law will be void and of no effect.

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

14.5 Third Parties Benefited. The State Parties are intended beneficiaries of all provisions of this Agreement and the Closing Documents for the benefit of the AOC.
14.6 **Governing Law; Jurisdiction.** This Agreement, and the Parties’ performance under this Agreement, will be exclusively governed by the laws of the State without regard to its conflict of law provisions.

14.7 **Construction.** The headings used in this Agreement are for convenience only and will not affect the meaning or interpretation of this Agreement. The words “hereof,” “herein,” and “hereunder,” and other words of similar import, refer to this Agreement as a whole and not to any subdivision of this Agreement. Both Parties have reviewed and negotiated this Agreement and the Closing Documents, and neither this Agreement nor the Closing Documents will be construed against a Party as the principal draftsperon. The words “include” and “including” when used are not exclusive and mean “include, but are not limited to” and “including but not limited to,” respectively. The capitalized terms used in this Agreement have the meanings ascribed to them in this Agreement.

14.8 **Integration.** This Agreement and the Closing Documents contain the entire agreement of the Parties with respect to the Transfer, and supersede all previous communications, representations, understandings, and agreements, whether verbal, written, express, or implied, between the Parties. To the extent a conflict arises between the terms and conditions of this Agreement and the terms and conditions of the Existing MOU, the terms and conditions of this Agreement shall control.

14.9 **Amendments.** This Agreement may be amended only by written agreement signed by both of the Parties.

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

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

14.12 **Further Assurances.** The Parties agree to cooperate reasonably and in good faith with one another to (1) implement the terms and provisions set forth in this Agreement, the Closing Documents, and the Act, and (2) consummate the transactions contemplated herein, and shall execute any further agreements and perform any additional acts that may be reasonably necessary to carry out the purposes and intent of this Agreement, the Closing Documents, and the Act.
The Parties hereto agree to the terms of this Agreement.

APPROVED AS TO FORM:
Administrative Office of the Courts,
Office of the General Counsel

By: ________________________________
Name: Kenneth Levy
Title: Attorney
Date: ______________________________

JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE
COURTS

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

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE BOARD
CHAIR:

By: ________________________________
Name: _____________________________
Title: Chairman of the Board of Supervisors
Date: ______________________________

By: ________________________________
Clerk of the Board of Supervisors,
County of Orange, California

COUNTY OF ORANGE, a political
subdivision of the State of California

By: ________________________________
Name: _____________________________
Title: Chairman of the Board of Supervisors
Date: ______________________________

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

By: ________________________________
Title: Deputy
Date: ______________________________
EXHIBITS

Exhibit “A” – Legal Description of the Land

Exhibit “B” – Floor Plan of Building

Exhibit “C” – Site Plan of Real Property

Exhibit “D” – Categories of Property Disclosure Documents

Exhibit “E” – Form of Memorandum of Transfer and Joint Occupancy Agreements

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