

EXHIBIT A-1

FACILITY OPERATION AND MANAGEMENT AGREEMENT
(432 bed facility)

This Facility Operation and Management Agreement (hereinafter "Agreement") is entered into by and between **FANNIN COUNTY, TEXAS** (hereinafter "County") and _____ (hereinafter called "Operator") effective on June 19, 2018.

WHEREAS, the County is the Owner or equitable owner of that certain Facility known as the "Fannin County Detention Center" (hereinafter "Facility"); and

WHEREAS, the Facility includes at least **432** inmate beds for secure detention; and

WHEREAS, the parties hereto desire to enter into an agreement for the operation and management of the Facility;

WHEREAS, the entering into this Agreement is found to be in the best interests of the parties, the efficient and safe operation of the Facility, and the public as it will serve the public purpose of providing space for incarceration of law violators and will provide economic development and economic benefits to the local economy; and

WHEREAS, the Facility is being acquired pursuant to a 2014 Revenue Refunding Bonds and Amended and Restated Sublease Agreement as of August 1, 2014, between the Fannin County Public Facility Corporation (also referred to as "Issuer") and the County (hereinafter "Sublease").

NOW, THEREFORE, in consideration of the mutual rights, benefits and obligations herein exchanged, the parties do covenant, agree and bind themselves as follows:

I. PURPOSES

1.01 Operator agrees to operate, manage and supervise the Facility on behalf of and for the County, and to receive, detain and care for all properly classified prisoners for which the Facility is approved that may be assigned to the Facility from:

- (a) The County Sheriff of the County (the "Sheriff");
- (b) The County Sheriff of any other Texas county, pursuant to an Interlocal Cooperation Contract with the County;
- (c) The Texas Department of Criminal Justice ("T.D.C.J.") pursuant to an agreement between T.D.C.J. and the County; or

- (d) The United States Government or any agency thereof, pursuant to an agreement between the County and the United States or any agency thereof, subject to any limitations of the Sublease Agreement under which the County is Lessee of the Facility, but holds equitable title.

Operator is acting as an Independent Contractor for the County, and is not a partner or joint venturer of the County. All prisoner housing contracts must be between the County and the jurisdiction or agency seeking the services. Only prisoners under such contracts shall be housed at the Facility.

1.02 Operation and management of the Facility must be in accordance with the applicable standards of the Texas Commission on Jail Standards, applicable requirements of the American Corrections Association, and applicable requirements of prisoner housing contracts.

1.03 Operator is an independent operator engaged for the public purpose of operating a detention center on behalf of the County. No property interest or right in the Facility or grounds is granted to the Operator by this Agreement, nor is any interest in the revenues therefrom, including Project Revenues (as defined herein), granted to the Operator.

1.04 The Operator shall operate the Facility in compliance with the terms of the Sublease Agreement. The Operator shall provide or cause to be provided all insurance, maintenance, certifications and other matters required of or made the obligation of the County under the Sublease. This includes preparation of all reports or disclosures required under the Sublease.

II. TERM

2.01 The term of this Agreement shall begin **June 19, 2018** and end on **September 30, 2019** ("Primary Term") with the option of up to two (2) five-year renewal periods which can be exercised by the mutual agreement of the County and the Operator. The Initial Term shall include a term beginning **June 19, 2018** and end on **September 30, 2019** (1 year, 3 months, and 11 days). The Renewal terms shall be from **September 30, 2019** to **September 30, 2024** and from **September 30, 2024** to **September 30, 2029**.

III. OPERATOR'S COMPENSATION

3.01 For purposes of this Article, the term "Project Revenues" shall have the meaning and be defined as said term is defined and used in the Sublease.

3.02 For purposes of this Article, the term "Operating Account" shall have the meaning such term is given in the Sublease. The term "Operator's Compensation" shall mean the amount payable to the Operator under Section 3.04 below.

3.03 Anything to the contrary herein notwithstanding, the Operator's Compensation shall be paid solely from and to the extent monies are available therefor in the Operating Account. The

Operating Account is funded by Project Revenues as set forth in the Trust Indenture dated as of August 1, 2014 ("Trust Indenture") and Sublease.

3.04 Operator shall be paid a fixed fee per prisoner, per day (actual occupancy) for the operation and management services provided hereunder to be paid on a monthly basis from the Operating Account, after the administrative fee/per diem to the County has been paid. The compensation to Operator shall be payable solely out of the Operating Account, and solely on a fixed per diem basis as available from the Operating Account on a monthly basis:

(a) Categories of Prisoners--

- (i) A fixed per prisoner, per diem fee of \$_____ for each U.S. Department of Justice, United States Marshal's Services ("USMS") inmate.
- (ii) A fixed per prisoner, per diem fee of \$_____ for each Fannin County inmate.

(b) In the event that the Operator is not paid its full compensation as set forth in Section 3.04(a) hereof for any calendar month, the deficiency in such payment shall be carried over to the following months and added to the Operator's Compensation due in following months during the term of this Agreement. On the termination of this Agreement, the unpaid compensation due and owing to the Operator shall be paid solely to the extent that monies are available therefor in the Operating Account, but only after all other Operation and Management Costs (as defined in the Trust Indenture), and any Operator Fee (Cost Plus) (as defined in the Trust Indenture) has been paid.

3.05 For the purposes of this Agreement, a "day" shall mean a twenty-four (24) hour time period beginning with twelve (12) o'clock midnight and ending twenty-four (24) hours later.

3.06 Nothing herein shall be a pledge or charge against County tax revenues. The County's obligations under this Agreement are special obligations payable solely from Project Revenues made available for such payment in the Operating Account.

3.07 The rate for the County's own inmates must be good for up to 115 inmates.

3.08 The Operator understands and agrees that the 2014 Revenue Bond Financing provides for the priority payment of an amount payable to the County to reimburse it for its administrative costs at the rate of \$2.50 per day per non-County inmate.

IV. DUTIES OF OPERATOR

4.01 Operator shall manage, operate and provide at its sole cost and expense:

- (a) all necessary furniture, fixtures and equipment not currently provided at the

Facility including but not limited to computers, fax and copy equipment, radios, televisions, uniforms and linens and basic office furniture and administrative phone systems, which are necessary or prudent for operation and management of the Facility and the housing of prisoners;

- (b) intake facilities and prisoner accounting which shall encompass booking, classification, record-keeping, billing, system of controls, identification systems and records, computerized communication interface with law enforcement agencies, and such statistical records as may be required by law or are generally accepted prisoner-locator practices;
- (c) attendants to control ingress and egress at the Facility, in addition to attendants necessary for the requisite level of security internally within the Facility and those required to monitor the activities of prisoners confined within the Facility;
- (d) food and beverage services;
- (e) clothing and uniforms;
- (f) engineering and maintenance;
- (g) procurement and purchasing;
- (h) recreational, vocational, counseling, education and exercise programs, and other program requirements required by law or prisoner housing contracts;
- (i) bookkeeping and financial accounting;
- (j) routine medical care/sick call, and access to non-routine care;
- (k) training of jailers to be employed at the Facility and all start-up costs of operations;
- (l) all repair, upkeep and ordinary maintenance (to the extent set forth below), required for the Facility;
- (m) necessary utilities and refuse services;
- (n) all other services necessary or proper for the efficient and safe operation of the Facility, and secure custody, care and housing of inmates, in compliance with all applicable federal, state and local laws and regulations, including the applicable standards of the Texas Commission on Jail Standards, and applicable standards of the A.C.A.; and
- (o) Transportation services for the transportation of the County's own inmates to

and from the local Fannin County district and county court proceedings.

In regard to 4.01(1) above, the County agrees to assign to Operator, when necessary and appropriate, any warranties or guarantees it might have or be entitled to with regard to the Facility in order to effect repairs on the Facility, or to give Operator the right to pursue the manufacturer, builder, or other supplier who gave such warranties or guaranties, to seek reimbursement for monies expended by Operator to meet its repair, upkeep and maintenance obligations under this Agreement to the extent that those expenditures relate specifically to work covered by the subject warranty or guaranty. Extraordinary repairs shall generally be paid or reimbursed out of a Operating Reserve Repair Contingency Fund established under the Sublease where funds are available in that account therefor, unless such is due to the negligence or intentional acts of Operator's employees, or by inmates due to the Operator's or its employees' negligence, or is covered by insurance or warranty. Operator's responsibility for extraordinary repairs, where funds are not available in a sufficient amount in the Operating Reserve Repair Contingency Fund to pay for the same, is limited to the proceeds of applicable insurance, unless the need for such repairs was created by the negligence or intentional act of its employees, or by inmates due to the Operator's or its employees' negligence. With respect to any warranties, County agrees to cooperate and use its best efforts to assist Operator to obtain such warranty work.

4.02 Operator shall prepare and furnish such reports as may be required by law to be submitted to the County and the Sheriff with respect to the operation of the Facility or the prisoners detained therein and, in addition, such other reports as may be required by a Texas state agency or any agency of the United States Government, or by any state or political subdivision thereof from which prisoners have been assigned to the Facility.

4.03 Operator shall obtain, and thereafter maintain, the proper certification(s) necessary for the Facility to incarcerate federal, state and local prisoners, and shall maintain such certification(s) at all times. After such certifications have been obtained, if Operator is required, by the laws of the State of Texas, other applicable law or the rules and procedures promulgated by the Jail Commission, to implement operational modifications to maintain such certificates, the County and Operator may agree upon temporary increases in the Operator's Per Diem sufficient over a reasonable period of time to reimburse Operator for the cost of such operational modifications.

4.04 Operator will properly incarcerate all prisoners assigned to the Facility for whom there is space available at the Facility within the statutory and regulatory limits of the Facility.

4.05 Notwithstanding anything contained herein to the contrary, the County, Sublessor (or financing entity) (or its assignee), and/or the Trustee shall have no liability whatsoever for any employees of Operator, Operator hereby agrees to indemnify and hold County and Sublessor (or financing entity) (or its assignee) harmless from all costs, claims, expenses, and liabilities (including attorney's fees) whatsoever which may be incurred by County and Sublessor (or financing entity) (or its assignee) and the Trustee arising from any and all acts done or omitted to be done by Operator, or the employees, agents and assigns of Operator, in connection with services performed or to be performed under this Agreement.

4.06 The interviewing, hiring, training, assignment, control, management, compensation,

promotion and termination of all members of the Facility's administration and staff shall be the responsibility and obligation of Operator. Operator will use its best efforts to hire and train local personnel.

4.07 Operator shall use its best efforts to purchase goods and professional services locally when economically feasible.

4.08 Operator shall make available to its employees health care benefits that, at a minimum, are comparable to those provided by the County to its employees.

4.09 Operator shall provide all balance sheets, income statements, inmate rolls, accounting records or reports, audits and other such matters required of the County or the Sublessor under the Sublease for the Facility, including, without limitation, those found in the Sublease; and all Project operation information necessary to carry out the Sublessor's and the County's continuing disclosure obligations under the Sublease and Trust Indenture. All operational responsibilities placed on the Sublessor or the County under the Sublease or the Trust Indenture are to be provided by the Operator. Operator warrants that it has read the Sublease and understands and agrees that to the extent of conflict between the Sublease and this Agreement, the Sublease controls.

V. MEDICAL CARE; TRANSPORTATION AND OFFSITE GUARD SERVICE

5.01 The Operator shall provide access to medical, optical, dental and emergency health care services. Basic medical care will be made available by Operator at Operator's cost to all prisoners detained at the Facility. Operator shall provide on-site nurses and medical technicians to handle sick-call and medical assessment and care that does not require a physician or specialist. The Operator shall also contract with a medical doctor to serve as medical consultant for the Facility.

5.02 The cost of hospitalization, prescription drugs, surgical, optical, dental care and all other non-basic medical services for which costs are incurred or charges made (and transportation costs to obtain such care) for a prisoner shall be the obligation of the jurisdiction or agency from which that prisoner was assigned to the Facility. The County shall have no obligation for such costs except to the extent the County was the jurisdiction from which the prisoner was assigned.

5.03 Reimbursement of the Operator's costs incurred for outside medical care if not paid directly by the jurisdiction or agency from which the inmate was assigned shall be paid directly to the Operator by the obligated jurisdiction, or if paid to the County by the obligated jurisdiction, shall be remitted directly to the Operator. Such reimbursements shall not be Project Revenues.

5.04 All revenues from housing of inmates and billings for transportation mileage charges and hourly guard services for offsite services are Project Revenues to be processed through the Trustee under the 2014 Bond Financing.

5.05 The transportation of the County's inmates to and from the local district and county court proceedings shall be the responsibility of the Operator without additional cost or expense to the County and is included in the per diem charge. The care and custody of the

County's own inmates at court proceedings after delivery to the court or before pickup from the court will remain the responsibility of the district court or county court security officers or bailiffs and/or the Fannin County Sheriff's Office, provided however, the Operator shall provide such security at such court proceedings.

5.06 The Operator agrees to provide transportation for Fannin County inmates to non-routine medical treatment and delivery to the institutional divisions of TDCJ and any other transportation services requested by the County not otherwise provided for in the Agreement at a reimbursed mileage charge at the prevailing federal mileage rate plus \$15.00 per hour per transportation/security officer. The reimbursement of any such transportation costs shall be invoiced and paid to the Operator on a monthly basis.

VI. COMPLIANCE WITH STANDARDS

6.01 Operator shall prepare and adopt a Procedures Manual for the operation of the Facility so as to assure that the Facility is operated fully in accordance with Texas state law, other applicable law, and rules and procedures promulgated by the Jail Commission. Operator shall make such modifications and corrections in the said Procedures Manual necessary to keep the Facility in compliance with Texas state law, the Prison Rape Elimination Act (PREA) and other applicable law, and the rules and procedures promulgated by the Jail Commission.

6.02 Operator shall assure that all employees at the Facility are adequately trained to perform at standards required by Texas state law, other applicable law, and the rules and procedures promulgated by the Jail Commission.

6.03 Operator shall comply with all standards and requirements of the prisoner housing contracts entered into with other jurisdictions and agencies by the County, and provide all services to be provided by the County under such contracts and pursuant to the terms of such contracts.

6.04 All jailers must be certified by TCLEOSE prior to undertaking jailer duties.

VII. DUTIES OF THE COUNTY

7.01 The County hereby covenants and agrees to transfer to the Facility all prisoners under the jurisdiction of the County from eligible third party transfer sources, and the County covenants and will insure that all incarceration agreements between the County and the third party sources set forth in Section 1.01 of this Agreement will permit such transfer to the Facility.

7.02 The County and the Sheriff shall cooperate with Operator in all matters of law enforcement, security and communications.

7.03 The County and the Sheriff shall assist Operator in the training, at Operator's expense, of Operator employees to operate the Facility.

7.04 The County and the Sheriff shall assist and cooperate with Operator in providing information needed by Operator in the screening of candidates for employment.

7.05 The County and Operator agree it shall be to their mutual benefit and interest that the Facility be fully utilized by maintaining the maximum prisoner population within statutory or regulatory limits. To this end, and throughout the term of this Agreement, the County and the Operator agree to cooperate in efforts to obtain maximum prisoner population from the sources set forth in Section 1.01 of this Agreement (i.e. County will enter into reasonable and advisable prisoner housing contracts or related agreements, Operator will actively seek to identify potential prisoner sources, etc.). It shall be the responsibility of Operator to assist the County in seeking out sources of prisoners for incarceration at the Facility, and to assist in negotiation and presentation for acceptance by the County contracts for the incarceration of prisoners from sources listed in Section 1.01 of this Agreement.

VIII. LIABILITY AND INDEMNITY

8.01 Operator hereby agrees to defend, hold harmless and indemnify the County, Sublessor (or its assignee) and/or the Trustee, their officers, directors, employees, agents, and representatives (including the County Judge, the County Commissioners, and the Sheriff), from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, incurred or suffered by any of them, arising out of or resulting from any negligent or wrongful act or failure to act by Operator pursuant to the provisions of this Agreement.

IX. INSURANCE

9.01 Operator shall obtain and maintain in force, at its sole cost, risk and expense during the term of this Agreement all insurance required to be maintained by the County under the Sublease. The insurance provisions of the Sublease are attached hereto as Appendix "A".

X. APPROVAL AND MONITORING BY COUNTY SHERIFF

10.01 The Sheriff signs this Agreement to evidence his approval as required by §351.102, *Local Government Code*.

10.02 The Sheriff shall periodically monitor the operation of the Facility, and, to this end, the Sheriff or his designated representative shall conduct a thorough on-site inspection of the Facility no less than twice during each month throughout the term of this Agreement. Such monitoring shall not create any liability to the County or the Sheriff, and shall not be a basis for release or defense to liability of the Operator.

XI. MAINTENANCE, UPKEEP AND REPAIR

11.01 All ordinary maintenance, upkeep and repair costs for the Facility shall be paid by Operator pursuant to subsection 4.01(1) of this Agreement except as otherwise provided therein. Operator agrees that its negotiated per diem, per prisoner fee has taken this operational expense into account.

XII. TAXES AND GOVERNMENTAL CHARGES

12.01 Operator shall be responsible for any taxes or governmental charges of any kind assessed or incurred after the effective date of this Agreement which are levied or imposed on the Facility and related property. To the extent that such taxes are chargeable against the Facility and found by a final non-appealable judgment of a court of competent jurisdiction to be due and owing, they shall be paid out of the Operating Account or any reserve accounts available for payment thereof as amounts due or payable under the Sublease. Such amounts are not a responsibility or debt of the County. This Facility is intended to be, and under current law, should be exempt from property taxation. The County is the owner of taxable title to the Facility based on current interpretations and decisions.

XIII. ADDITIONAL PROVISIONS

13.01 Notwithstanding anything to the contrary contained herein, in the event that the Sublease is in default or notice of default or termination has been given prior to the County's exercise of its option to purchase the Facility pursuant to the Sublease and, as a result thereof, the County surrenders possession of the Facility to the Sublessor or its assigns, this Agreement shall be immediately terminated and canceled, and the County and Operator shall have no future duties, obligations or liabilities to each other in connection with this Agreement or in connection with the termination and cancellation of this Agreement. Thereafter, Operator may be selected by Sublessor or its assigns to provide operation, maintenance and supervision of the Facility. In the event the Sublease is in default, the Operator retains a non-disturbance agreement with the lending institution.

13.02 Notwithstanding anything to the contrary contained herein, in the event any bankruptcy, reorganization debt arrangement, moratorium, proceeding under any bankruptcy or insolvency law or dissolution or liquidation proceeding is instituted by Operator, or if instituted against Operator, is consented to or acquiesced in by Operator and is not dismissed within sixty (60) days, the Agreement shall be immediately terminated and canceled, and the County shall immediately assume responsibility for the operation, management and supervision of the Facility.

13.03 Either party may terminate this agreement for the failure of the other party to comply with a material provision hereof after sixty (60) days written notice and opportunity to cure.

13.04 The right to contract for inmate telephone service belongs to the County. The operator shall cooperate with the County and its selected vendor for inmate telephone service.

13.05 Commissary services procurement shall be made in coordination with the Sheriff and in compliance with §351.0415 of the Local Government Code. Commissary proceeds will be placed in a separate account controlled by the Sheriff to be used only for inmate welfare purposes at the Facility in accordance with §351.0415(c), Local Government Code. Inmate welfare purposes shall be items or services beyond what the Operator is required to provide under this Agreement. In no circumstance shall commissary revenues be used to defray the costs of the Operator for services/items that it is already required to provide under this Agreement.

13.06 The Operator and the County each represent that no member of the Commissioners

Court of Fannin County, no elected or appointed peace officer who serves in Fannin County, and no employee or Commissioner of the Texas Commission on Jail Standards has a financial interest in the Operator.

13.07 Service Contract Act Compliance. The United States Department of Labor considers this Agreement to be subject to the **Service Contract Act**. Operator shall be responsible in all respects for compliance with the SCA and its applicable regulations, and shall indemnify and hold harmless the County from any back-pay assessments, liquidated damages, penalties, attorney's fees or other costs created by non-compliance. APPENDIX "B" ATTACHED HERETO PROVIDES MORE DETAILED INFORMATION AND MUST BE CONSULTED AND COMPLIED WITH BY THE OPERATOR. APPENDIX "B" IS INCORPORATED IN THIS AGREEMENT BY REFERENCE AS IF SET FORTH VERBATIM HEREIN.

XIV. APPLICABLE LAW AND VENUE; LEGAL CONSTRUCTION

14.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fannin County, Texas, and venue of any action or dispute shall be in a court of competent jurisdiction in Fannin County, Texas.

14.02 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14.03 If for any reason this Agreement shall be held void or voidable, or otherwise be held unlawful, this Agreement shall immediately terminate, and Operator shall have no claim or right of action against the County, its officials, its employees, its agents or its attorneys for any such termination or alleged act or omission related to the same.

XV. NOTICES

15.01 Notices required to be given hereunder by any party to the other shall be in writing and shall be valid if actually received by the party to whom such notice is given or if deposited in the United States Mail, postage prepaid and addressed to the party as herein below specified.

Notices to the County shall be delivered or sent as follows:

Fannin County, Texas
Attention: County Judge
Fannin County Courthouse
101 East Sam Rayburn Drive
Bonham, Texas 75418

Notices to Operator shall be delivered or sent as follows:

Notices to the Trustee shall be delivered or sent as follows:

U.S. Bank National Association
Attention: Corporate Trust Services
950 17th Street, Suite 300
Denver, Colorado 80202

XVI. EXECUTION AUTHORITY

16.01 By his or her signature below, each signatory individual certifies that he or she is the properly authorized agent or officer of the applicable party hereto, and has the necessary authority to execute this Agreement on behalf of such party, and each party hereby certifies to the other that any resolutions necessary to create such authority have been duly passed and are now in full force and effect.

XVII. INCORPORATION OF RFP

17.01 The parties to this Agreement incorporate herein the additional details, terms and conditions of the Operator’s written response to the County’s request for proposals for the operation and management of the Fannin County Detention Center and Fannin County Jail. The terms of this Agreement and the terms of the Operator’s written proposal shall be construed together. To the extent there are conflicts between the terms of the written proposal of Operator, the terms of this Agreement shall prevail.

XVIII. AMENDMENT

18.01 This Agreement may be amended only by a written instrument specifically purporting to amend this Agreement and which is approved and executed by all parties hereto.

XIX. ENTIRE AGREEMENT

19.01 This Agreement constitutes the sole and only Operation and Management Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

SIGNED this _____ day of June, 2018.

FANNIN COUNTY, TEXAS

ATTEST:

By _____

CRETA L. CARTER II
County Judge

County Clerk

APPROVED:

Fannin County Sheriff

June ____, 2018

Operator

By:_____

Print Name:_____

Title:_____

Date: _____

ATTEST:

Corporate Secretary

APPENDIX "A"

7.3 Liability Insurance. From and after the Completion Date, during the Term of this Sublease and as Operation and Maintenance Costs. County shall procure and maintain continuously in effect, with respect to the Project, insurance against any liability for injuries to or death of any person or injury to or loss of property arising out of or in any way relating to the maintenance, use or operation of the Project or any part thereof in a minimum amount of \$5,000,000. Issuer will, before the Completion Date, cause the Design/Developer to maintain similar or cause to be maintained insurance against all similar liabilities on their part and to furnish certificates evidencing such coverage. If funds to obtain such insurance are not available as stated in the immediately preceding sentence, County shall notify Trustee of same prior to the expiration of existing insurance coverage.

7.5 Property Insurance. During the Term of this Sublease and as Operation and Maintenance Costs, County shall have and assume and shall bear the risk of loss with respect to the Project and shall, from and after the Completion Date, procure and maintain, or cause to be procured and maintained, continuously in effect with respect to the Project, in a minimum amount equal at least to the principal amount of Bonds Outstanding, all-risk insurance, including coverage for riots, subject only to the standard exclusions contained in the policy. County also shall obtain business interruption insurance protecting County, Issuer and Trustee against the loss of Project Revenues sufficient to pay Operation and Maintenance Costs and Rental Payments otherwise due hereunder for a period of one year. The proceeds of such business interruption insurance shall be paid to the Project Fund and applied as provided therein if and to the extent that other moneys (other than moneys held in the Reserve Fund) are not available to pay Operation and Maintenance Costs and make Rental Payments. All policies (or endorsements or riders) evidencing insurance required by this Section 7.5 shall be carried in the names of County, Issuer and Trustee as their respective interests may appear and shall name Trustee as mortgagee and loss payee. Before the Completion Date, Issuer will cause the Design/Developer to maintain the all-risk insurance required by this Section 7.5 and furnish certificates evidencing such coverage. The Net Proceeds of insurance required by this Section 7.5 shall be applied as provided in this Section 7.5 and Section 8.1 hereof.

7.6 Workers' Compensation Insurance. From and after the Completion Date, during the Term of this Sublease and as Operation and Maintenance Costs, if required by State Law, County shall either (i) carry, or cause to be carried, Workers' Compensation Insurance, or lawful alternative, covering all employees on, in, near or about the Project, or (ii) be self-insured to cover risks typically covered by Workers' Compensation Insurance. Upon request, County shall furnish to Issuer certificates evidencing such coverage or self-insurance throughout the Term of this Sublease. Before the Completion Date, Issuer will cause the Design/Developer to maintain the insurance required by this Section 7.6 and furnish certificates evidencing such coverage.

7.7 Other Insurance and Requirements for Insurance. All insurance required by this Article VII may be carried under a separate policy or a rider or endorsement; shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States, qualified to do business in the State and having a rating from A. M.

Best of A- or higher; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to both parties and Trustee at least thirty (30) days before the cancellation or revision becomes effective; and (except for Worker's Compensation Insurance) shall name County, Issuer and Trustee as insured parties and name Trustee as mortgagee and loss payee. County and Issuer shall deposit with Trustee policies evidencing any such insurance procured by it or the Design/Developer, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Thirty (30) days before the expiration of any such policy, County shall furnish to Issuer and Trustee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VII, unless such insurance is no longer obtainable, in which event such party shall notify the other party of this fact. The Trustee shall have no responsibility for the monitoring, renewing, or receiving the insurance or documents pertaining thereto, except provided in this Article VII. The parties understand that the Trustee makes no representations and shall have no responsibility for the sufficiency of the insurance policies herein required.

APPENDIX B

FEDERAL SERVICE CONTRACT ACT

(a) Service Contract Act of 1965, as amended: This contract is subject to the Service Contract Act of 1965, as amended ([41 U.S.C. 351 et seq.](#)) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action

taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced

contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in subpart D of 29 CFR part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.1b(b) of 29 CFR part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in [§ 4.10 of 29 CFR](#) part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in [§ 4.11 of 29 CFR](#) part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is

found in accordance with the review procedures provided in [29 CFR 4.10](#) and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. [53 Comp. Gen. 401 \(1973\)](#). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor:

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to § 4.6(1)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for

completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term contractor as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term Government prime contractor.

(k)(1) As used in these clauses, the term service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term service employee includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of [5 U.S.C. 5341](#) or [5 U.S.C. 5332](#) and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits
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(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based

upon length of service with a contractor (predecessor) or successor ([§ 4.173](#) of Regulations, 29 CFR part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu

thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in parts 525 and 528 of title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) Where an employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips, the amount of tips received by the employee may be credited by the employer against the minimum wage required by Section 2(a)(1) or 2(b)(1) of the Act to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of

Labor, or the employees or their representatives.

(The information collection, recordkeeping, and reporting requirements contained in this section have been approved by the Office of Management and Budget under the following numbers:

Paragraph	OMB control number
(b)(2) (i)—(iv)	1215-0150
(e)	1215-0150
(g)(1) (i)—(iv)	1215-0017
(g)(1) (v), (vi)	1215-0150
(l) (1), (2)	1215-0150
(q)(3)	1215-0017

OPERATOR IS RESPONSIBLE FOR COMPLIANCE WITH THE SERVICE CONTRACT ACT.

PLEASE CONSULT THE MOST RECENT WAGE DETERMINATION OF THE USDOL APPLICABLE TO THE FACILITY.

IT IS OPERATOR'S RESPONSIBILITY TO SEEK IGA MODIFICATIONS FOR APPROVAL OF THE COUNTY TO COVER THE COST OF MAINTAINING SCA COMPLIANCE