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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

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MARCIANO PLATA, et al.,
Plaintiffs,
v.
ARNOLD SCHWARZENEGGER, et al.,
Defendants.

Case No. C01-1351 TEH

**DECLARATION OF JOSEPH McGRATH
IN SUPPORT OF RECEIVER'S
SUPPLEMENTAL APPLICATION NO. 3
FOR ORDER WAIVING STATE
CONTRACTING STATUTES,
REGULATIONS AND PROCEDURES,
APPROVING RECEIVER'S
SUBSTITUTE PROCEDURE FOR
BIDDING AND AWARD OF
CONTRACTS**

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I, Joseph McGrath, declare as follows:

1. I am currently the Director of Custody Support Services for the California Prison Health Care Receivership and make this declaration in support of the Receiver's Supplemental Application No. 3 for a Waiver of State Contracting Procedures. The facts set forth herein are based on my own personal knowledge and, if called as a witness, I could competently testify thereto.
2. I worked for the California Department of Corrections and Rehabilitation in a variety of capacities for more than 27 years before joining the Receiver's staff in June 2006. As part of my responsibilities on behalf of the Receiver, I have been coordinating the Receiver's "Health Care Facility Improvement Program," which includes planning for the construction of additional clinical space at various prisons, including Avenal State Prison ("ASP").
3. The Health Care Facility Improvement Program is designed to create new clinical and clinical support space to provide a safe environment for staff to deliver appropriate care to inmate patients. ASP was selected by the Receiver as the second site (after San Quentin) in which to begin remediation of the deficient clinical treatment space throughout the CDCR prisons. The Receiver mandated that all planning efforts be coordinated with the remedial plans under way in other litigation affecting inmate-patients (e.g., *Coleman* and *Armstrong*), as well as CDCR AB-900 construction efforts.
4. Background. ASP was opened in 1987. The prison was originally designed to house approximately 2,920 inmates in dormitory housing units. The prison has experienced severe overcrowding, including double bunking, triple bunking, gym conversions to dormitory housing units and construction of additional dormitory housing units within the facilities. The CDCR has increased the capacity of the inmate population to 8,038 and is presently housing 7,525 inmates.
5. The clinic/treatment space provided in the original design of ASP is inadequate for the number of inmate-patients housed there. Facility 1 and Facilities 2 through

1 6 within the institution were originally planned to house 455 and 516 inmates,
2 respectively, and were provided with a single exam room, a nurse screening room,
3 and a small pill room with pill window. No space exists for nursing or provider
4 charting. Now that each facility is housing between 1,000 and 1,400 inmates, the
5 number of exam spaces is inadequate. The limited number of exam rooms
6 available to serve the inmate populations, has created a significant backlog of
7 medical requests that continues to increase. Additionally, the lack of additional
8 exam space limits the ability of the health services team to hire additional
9 providers and to increase the number of inmate-patients seen to meet the medical
10 needs of the inmate population. The lack of space within the facility resonates
11 down to the single pill window available to distribute medications to the inmate-
12 patients. The process for distribution of daily doses of medication can take
13 upwards of hours with inmates standing in line in temperatures in excess of 90
14 degrees as well as inclement weather. Additional pill windows at each facility are
15 needed to allow staff to effectively provide daily medications.

- 16 6. The ASP original construction also provided a 100 bed Administrative
17 Segregation Housing Unit (“ASU”) for inmates displaying problem behavior. The
18 ASU building did not provide clinical treatment space within the unit necessary to
19 minimize the need to escort inmate-patients across the prison for medical care.
20 The unit has no medical exam space which requires inmates to be escorted outside
21 to the Infirmary building where specialty services to other inmates must be shut
22 down to accommodate access by the individual ASU inmate. The closure of the
23 Infirmary further exacerbated the ability of the health services team to meet the
24 medical needs of the remaining inmate population. It is imperative that adequate
25 clinical treatment spaces be available in the ASU to effectively deal with the day
26 to day healthcare issues in a timely manner. This unit now has been overcrowded
27 to 175% of design capacity, aggravating the problem. ASP staff has identified the
28 ASU inmate-patient group as the most underserved in the prison.

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7. ASP has also experienced CDCR mission change decisions that have increased inmate-patient clinical acuity levels at the prison. ASP now houses mobility impaired inmates, mentally ill inmates and a significant number of elderly inmates. These program changes were made with minor or no accommodation of additional medical, mental health or dental facilities to serve the increased inmate-patient needs. One significant affect of these program changes in combination with the overcrowding can be directly seen by the impact to the Pharmacy and its ability to effectively and correctly process prescriptions. The existing pharmacy is less than 300 square feet in size and attempts to accommodate the 10 and 12 staff needed to process and fill the prescriptions on a daily basis. As a result of these space constraints, record keeping and accuracy and control of medication distribution is challenging. In an institution of this size with this type of population and medical needs, a pharmacy of at least 1,400 s.f. is needed.

8. ASP, over the years, has been provided with additional staffing resources as the overcrowding increased and the facility missions were changed. The CDCR did not construct appropriate space to accommodate the additional staffing resources augmented to the institution, causing the existing space designed for inmate program or treatment space to be converted to non-clinical office space to provide accommodations for the increased staff arriving at the prison. Such conversions further reduced the already insufficient clinical areas within the institution that can be used for direct inmate care and services. These factors had an adverse effect upon the prison's clinical/treatment space. The foregoing factors have combined to create a crisis situation at ASP and are adversely affecting the delivery of appropriate health care services to the inmate population.

9. Prior waiver. In the June 4, 2007 Order the Court granted a waiver of contracting procedure with respect to the Temporary Medical Facility Project at ASP to permit the installation of temporary buildings. Thereafter, during the process of developing the programming and planning for the temporary medical facility, two

1 issues became apparent: (1) simultaneously with the development of the
2 temporary facilities, certain modifications to existing physical plant of a more
3 permanent nature will be necessary to provide critically needed health care to
4 inmates; (2) such permanent modifications or additions would comprise a cost
5 effective solution in addressing the immediate needs. The Receiver anticipates
6 that renovating permanent structures in addition to longer term modular
7 construction will address most of the facility expansion needs that were expected
8 to be implemented in the next three to five years.

9 10. *Description of the Project.* The plan has been broken down into two types of
10 facility upgrades, shorter term (60 to 90 days) and longer term (longer than 90
11 days).

12 11. Shorter term projects provide the quickest approach to providing immediate
13 additional temporary clinic space through the use of prefabricated trailers with
14 finished, turnkey space for clinical exam rooms, administration areas, supply
15 storage, etc. These temporary facilities were the subject of the Master Application
16 and June 4, 2007 Order. However, as part of the shorter term project, certain
17 minor renovations to the interior spaces of the existing Infirmary must also be
18 completed to permit that building to be used for inmate treatment, thereby
19 increasing the ability of the health services team both to contract with specialty
20 providers and to see inmate-patients on-site rather than undertake costly transports
21 out to alternate facilities. Contracts for the modifications to the Infirmary were
22 not included within the Master Application and are, therefore, made part of this
23 application.

24 12. Longer term projects make use of various construction methods and systems,
25 including modular building units assembled in standard sizes placed on concrete
26 slab on grade for more long term use that responds to the functional and
27 operational configurations and needs of the institution. This solution in some
28 instances may more closely resemble a permanent solution depending upon the

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programmatic needs and the facility conditions within which they are developed and applied.

13. The project team will plan, design and construct clinical treatment space that will be provided by three complex clinics to support the six facilities. Each complex clinic will provide needed medical and mental health clinic treatment space for the inmate-patients housed in the two adjacent facilities for which it serves. Clinical treatment spaces will be constructed within the ASU to provide appropriate care and minimize escorting outside of the building. The team will additionally plan, design and construct modular office space to allow for the full conversion of Central Infirmary Building space to specialty clinic/treatment space and remodel and expand the pharmacy. The modular building will additionally provide for health services training space to ensure that health care providers are trained on appropriate clinical process and protocols. Clinical support spaces will be planned for and constructed and will include the expansion of medication distribution areas in the existing facility clinics, and construction of a permanent medical supply warehouse to allow proper storage, inventory control, access, and distribution of supplies and equipment to clinical areas throughout the institution.

14. *Description of the contracts necessary to implement the Project.* The facility construction project at ASP will require contracts for the planning, design and construction of the renovations to existing structures and the planning, design and construction of the new clinical space, including the modular buildings. The Receiver anticipates that most of the contracts will be awarded utilizing the expedited formal bidding process, although there may be some contracts awarded under the urgent informal bidding process, particularly in connection with the emergency phase of the project.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 27, 2007



Joseph McGrath

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On November 27, 2007 I served a copy of the following document(s):

DECLARATION OF JOSEPH McGRATH IN SUPPORT OF RECEIVER'S SUPPLEMENTAL APPLICATION NO. 3 FOR ORDER WAIVING STATE CONTRACTING STATUTES, REGULATIONS AND PROCEDURES, APPROVING RECEIVER'S SUBSTITUTE PROCEDURE FOR BIDDING AND AWARD OF CONTRACTS

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

___ BY HAND DELIVERY: I caused such envelope(s) to be served by hand to the address(es) designated below.

X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

___ BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

___ BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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26 Dated: November 27, 2007



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