

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into by and between: (1) Greater Stockton Chamber of Commerce, a California non-profit corporation ("Chamber"), County of San Joaquin ("County"), and City of Stockton ("City"), all of which are collectively referred to herein as "Petitioners"; and (2) J. Clark Kelso, in his capacity as Receiver ("Receiver"), the California Prison Healthcare Receivership Corporation ("CPR"), and the California Department of Corrections and Rehabilitation ("CDCR"), all of which are referred to collectively herein as "Respondents." All of Respondents and Petitioners are referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

A. In 2005, Judge Thelton H. Henderson of the United States District Court for the Northern District of California, in the class action *Plata v. Schwarzenegger*, U.S. Dist. Ct., N.D. Cal., No. C01-01351 ("*Plata*"), placed California's prison medical health care system in receivership finding a number of serious problems and constitutionally inadequate care provided to California inmates;

B. On February 14, 2006, the *Plata* court appointed Robert Sillen as Receiver, with an effective date of April 17, 2006. On January 23, 2008, the *Plata* court appointed J. Clark Kelso to replace Sillen as the Receiver, and Kelso has served in that capacity to date. The *Plata* "Order Appointing Receiver" authorizes the Receiver "to exercise all powers vested by law in the Secretary of CDCR as they relate to the administration, control, management, operation, and financing of the California prison medical health care system";

C. On April 23, 1990, a class of plaintiffs filed an action entitled, *Coleman v. Schwarzenegger*, U.S. Dist. Ct. (E.D. Cal.) No. 2:90-cv-00520-LKK ("*Coleman*"), alleging that the mental health care system in California prisons violated the Eighth Amendment. Plaintiffs filed a first amended complaint on July 25, 1991. Subsequently, the *Coleman* court appointed a Special Master to implement a remedial plan and the *Coleman* court has issued a number of orders requiring the construction of additional mental health care bed space;

D. On February 26, 2008, the judges in *Plata* (medical care), *Coleman* (mental health care) and other class actions challenging various aspects of the prison health care system,

approved a construction coordination agreement, regarding (among other projects) the construction of approximately 5,000 additional CDCR medical beds and 5,000 CDCR mental health beds;

E. On October 12, 2009, pursuant to the California Environmental Quality Act ("CEQA"), the Receiver adopted a resolution certifying the Final Environmental Impact Report ("Final EIR") for a proposed California Health Care Facility, in San Joaquin County, just outside of the City of Stockton ("Project") which would provide subacute medical and mental health care for CDCR inmates in furtherance of the orders in *Plata* and *Coleman*;

F. The Project would result in Respondents constructing a subacute medical and mental health care facility on the Project site with up to 1,734 beds for CDCR inmates. The facility would consist of approximately 1.2 million square feet and would include housing clusters, diagnostic and treatment centers, outdoor recreation fields, and other amenities;

G. On October 12, 2009, pursuant to the Order Appointing Receiver in *Plata*, the Receiver also adopted a resolution exercising authority of the Secretary of CDCR for purposes of approving the Project, adopting the CEQA findings of fact and statement of overriding considerations, adopting the mitigation monitoring and reporting program and adopting the conditions of approval;

H. The Secretary of CDCR, Matthew L. Cate, concurred in the Receiver's October 12, 2009 resolutions certifying the Final EIR for the Project;

I. The Receiver and the Secretary of CDCR filed a Notice of Determination for the Project on October 19, 2009;

J. With respect to the Project, the Receiver contends that he acted (i) pursuant to the powers and duties conferred by the *Plata* court; (ii) in furtherance of the remedial plans proposed by Receiver Kelso and adopted by the *Plata* court; (iii) in cooperation with the Special Master appointed by, and pursuant to authorization from, the Court in *Coleman*; and (iv) in accordance with the February 26, 2008 Order approving a construction coordination agreement in *Plata*, *Coleman* and other related actions;

K. On November 17, 2009, Petitioners filed a petition for writ of mandate in the Superior Court of San Joaquin County (*Greater Stockton Chamber of Commerce, et al. v. J.*

Clark Kelso, et al., Case No. 39-2009-230310-CU-WM-STK) alleging that Respondents' certification of the Final EIR and approval of the Project violated CEQA. In particular, Petitioners alleged that Respondents failed adequately to mitigate Project impacts, including but not limited to impacts on County and City public facilities, such as roadways, police and fire services, and hospitals ("Petition");

L. Respondents removed the Petition to the United States District Court, Eastern District of California on November 25, 2009 and Judge Lawrence K. Karlton issued a Related Case Order on December 4, 2009 finding that the *Coleman* case and the Petition were related, resulting in re-assignment of the Petition to Judge Karlton for all further proceedings (Case No. 2:09-cv-03308-LKK-JFM);

M. Petitioners filed a Motion to Remand the Petition to state court on December 22, 2009 which Judge Karlton denied on April 2, 2010;

N. The Parties, without any admission of liability, desire to settle the Litigation according to the terms set forth in this Agreement, the basic outline of which was agreed to in principle during settlement conferences held between the Parties during the week of April 5, 2010;

O. The County's Board of Supervisors shall considered approval of this Agreement at its June 8, 2010 meeting;

P. The City Council of the City of Stockton shall considered the approval of this Agreement at its June 8, 2010 meeting.

AGREEMENTS

NOW THEREFORE, in consideration of the execution of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and subject to the terms and conditions hereof, the Parties hereby agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Settlement Measures. The Parties agree to implement the measures listed herein within the time frames set forth.

I. TRAFFIC RELATED AGREEMENTS

1. Project-Related Traffic Mitigation.

A. Frontage on Austin Road. CDCR will dedicate to the County right-of-way ("ROW") easements on CDCR property¹ from the intersection of Arch and Austin Roads to the project's southerly boundary to allow the widening of Austin Road to the road width identified in the County General Plan or other applicable governing plan (approximately thirty (30) feet in width from the centerline of Austin Road plus an additional eighteen (18) feet for the ultimate road width). CDCR and the Receiver will construct lighting, if needed, and paving of that portion of Austin Road from its current centerline to 30 feet west thereof, to County specifications, as a Rural Collector Road, for the length of the above described segment of Austin Road (approximately 4,000 lineal feet). In the alternative, CDCR and/or the Receiver and County may agree that CDCR will pay County the sum of \$1,077,670, as the estimated reasonable cost of the street improvements required to upgrade and expand the western half of Austin Road from 12 feet to 30 feet from the centerline of the road, and, if it is determined that the street lighting is needed, the sum of \$440,734 as the estimated cost of installing street lights along Austin Road. County shall use such funds for the construction of the Austin Road improvements. CDCR and/or the Receiver and the County shall agree on whether street lighting is necessary to be installed based on whether lighting from the correctional facility will sufficiently illuminate Austin Road, and on whether CDCR and/or the Receiver will construct the improvements or pay the County, as set forth herein, no later than sixty (60) days after the execution of the Design/Build contract. The Standard County Conditions set forth in Exhibit 1 shall apply to the dedication of ROW and construction within the ROW.

¹ As used in this Agreement, the "CDCR Property" means that property owned by CDCR agencies generally bounded by Arch and Austin Roads and includes the two currently operating Division of Juvenile Justice (DJJ) facilities (O.H. Close Youth Correctional Facility and N.A. Chaderjian Youth Correctional Facility) and the new or re-purposed facilities, (the CHCF, the re-purposed De Witt Nelson facility and the re-purposed Northern California Women's Facility [NCWF] facility [the new Northern California Re-Entry Facility]). The CDCR Property also includes the existing state-owned property designated for the construction of a future facility for the California Conservation Corps.

B. Arch/Austin Road Intersection. Based on the County plan to install the signal at this intersection in the near term to enhance safety and improve conditions for the CHCF and other planned correctional facilities, the Receiver and CDCR agree to pay their fair share amount towards installation of a traffic signal at the intersection of Arch Road and Austin Road, with turn lanes consistent with the County circulation plan. The fair share amount has been determined and agreed to be \$171,000. This payment will be credited against any payment/contribution required under the San Joaquin Council of Governments' ("SJ COG") Regional Transportation Impact Fee ("RTIF") if the traffic signal and turn lanes described herein are included in the Regional Transportation Improvement Plan. The County will be responsible for securing any right of way needed for signalization that is not already on State-owned property. This payment will be made within sixty (60) days of CDCR or the Receiver, as the case may be, issuing the notice to proceed with construction of the CHCF buildings pursuant to the Design/Build contract.

C. Maintenance and Operation Costs of Street Lighting. The Receiver and CDCR agree that CDCR will be responsible for the costs of maintenance, repair, replacement and operation (*e.g.* electricity costs) for the street lights along the Austin Road frontage abutting the CDCR Property, if such street lighting is determined to be necessary and is installed. These street lights will be connected to the electric service for the CDCR property and electricity costs will be paid directly by CDCR. The Receiver and CDCR agree that, if direct payment by CDCR as set forth herein is not feasible or the parties determine that it would be beneficial to provide for the County to operate and maintain these street lights, CDCR will pay the costs of maintenance, repair, replacement and operation to the County either through a contractual agreement or through participation in a county service area, landscaping and lighting act assessment district, or similar financing mechanism, provided that CDCR shall pay only for the direct and actual costs of maintenance, repair, replacement and operation of the street lights abutting the CDCR Property.

D. Regional Fair-Share Transportation Improvements - Fees.

(1) County Traffic Impact Mitigation Fee ("TIMF"). CDCR, the Receiver and the County agree that the TIMF for the CHCF shall be \$679,794.24. This fee shall be paid to the County within sixty (60) days of CDCR or the Receiver, as the case may be,

issuing the notice to proceed with construction of the CHCF buildings pursuant to the Design/Build contract.

(2) **SJ COG RTIF.** CDCR and the Receiver agree that CDCR and the Receiver shall pay RTIF fees for the CHCF in the amount of \$1,229,196.93. The fair share payment for the Arch and Austin Road intersection traffic signalization set forth in section I.1.B, above, shall be credited against any payment/contribution required under the SJ COG RTIF if the traffic signal and turn lanes are included in the Regional Transportation Improvement Plan. Any payments or the costs of any improvements made by the Receiver and/or CDCR related to the State Route 99/Arch Road Interchange shall be credited against the total amount due from the Receiver and/or CDCR for the RTIF, if these improvements are included in the Regional Transportation Improvement Plan. This payment shall be made within sixty (60) days of CDCR or the Receiver, as the case may be, issuing the notice to proceed with construction of the CHCF buildings pursuant to the Design/Build contract.

E. **City Traffic Impact Fees and Traffic Signal Fees.** CDCR and the Receiver shall not be required to pay any traffic impact fees or traffic signal fees to the City of Stockton for the CHCF.

II. SALES TAX/DIRECT PAYMENT PROCESS FOR DELIVERED CONSTRUCTION MATERIALS

Prior to beginning the CHCF project and thereafter as appropriate, all contractors for the construction of the CHCF and their subcontractors providing materials or equipment for the same construction, and any related activities will be required to review the use tax direct payment permit process established under California Revenue and Taxation Code section 7051.3. It is CDCR's intent to require the contractors and subcontractors to participate in the sales tax allocation program to the full extent permitted by law. Accordingly, CDCR will require all qualifying contractors and subcontractors to exercise the option to obtain a Board of Equalization sub-permit for the job site and allocate all eligible sales and use tax payments to the County of San Joaquin (pursuant to the Direct Payment Process established under State Revenue and Taxation Code section 7051.3). Prior to commencement of any construction activity, and thereafter as appropriate, all contractors and subcontractors shall provide CDCR and the County of San Joaquin with either a copy of their Board of Equalization ("BOE") account number and

sub-permit, or a statement certifying that use tax does not apply to their portion of the project. As needed, CDCR and/or CDCR's contractors and their subcontractors will request the County of San Joaquin to provide the information and materials necessary to exercise the above use tax option. Upon request of the County of San Joaquin, CDCR and/or CDCR's Prime Contractors and their subcontractors will make purchase records available for third-party review to verify that allocation of all eligible sales and use tax payments are recorded in accordance with the Direct Payment Permit Process.

This provision applies only to the construction of CHCF and does not apply to operation of the CHCF.

III. COUNTY SERVICES

1. **San Joaquin County Coroner's Office.** The parties agree that CDCR shall pay for all services provided by the Coroner's Office to CHCF at the reasonable, nondiscriminatory, and customary rates applicable to all persons or entities that may utilize the Coroner's services as established by the San Joaquin County Board of Supervisors for Coroner Services, from time to time.

2. **County Hospital Secured Ward and other items related to San Joaquin General Hospital ("SJGH").** The Receiver and/or CDCR and SJGH shall enter into one or more agreements for a secured ward or medical guarded unit ("MGU") at SJGH. The agreement(s) shall be substantially in the form attached hereto as Exhibit 2.

IV. CITY OF STOCKTON ANNEXATION, WATER AND SEWER AGREEMENTS

A. San Joaquin Local Agency Formation Commission ("SJLAFCO"): Out of Agency Water Agreement and Annexation.

CDCR has agreed to seek SJLAFCO approval in order to facilitate the water delivery infrastructure originally proposed by Forward Landfill Inc. in its effort to comply with the Central Valley Regional Water Quality Control Board Cleanup and Abatement Order No. 5-2008-0714, dated December 8, 2008 directing Forward Landfill to provide the CDCR Property with drinking water.

1.a. **Water Service:** CDCR shall apply to the City for an Out of Agency water extension from SJLAFCO for authorization to allow the City to provide water

service to the CDCR Property. CDCR will be responsible to pay for the City's application fee and the applicable SJLAFCO processing fee. These fees will be based on the administrative costs of such actions by the respective agencies. The respective applications will be filed not later than 30 days after project approval by the State Public Works Board ("PWB"). However, the applications may be filed at any earlier time that CDCR and the Receiver determine is appropriate. The City agrees to diligently pursue SJLAFCO approval of the authority to provide the water service. The City will support and advocate for the application to SJLAFCO for the Out of Agency water service extension approval. San Joaquin County will not oppose the Out of Agency water service extension.

At CDCR's request, SJLAFCO has determined that the processing fees and other costs that SJLAFCO may charge CDCR for the Out of Agency water extension shall not exceed \$13,500. The total cost of all fees and costs for the City processing of the Out of Agency water extension set forth in this section 1.a, shall not exceed \$35,000 in total (the \$35,000 includes only the City's processing fees and costs for the Out of Agency water extension application to SJLAFCO, and does not include SJLAFCO's fees and costs, as set forth above). If the City's costs for the Out of Agency water extension application and approval exceed \$35,000 in total, the City shall pay any amount in excess of \$35,000. Except as provided in this Paragraph 1.a, no additional fees or charges or impact fees shall be incurred by CDCR for the Out of Agency water extension.

Notwithstanding the foregoing, if SJLAFCO denies the Out of Agency water service extension, then CDCR and the Receiver shall have the option, at their discretion, (1) to terminate this Agreement as to the City, in which case the City's lawsuit (*Greater Stockton Chamber, et al v. J. Clark Kelso, et al.* Eastern District of California, Case No. 2:09-cv-03308-LKK-JFM) may proceed as to the City only, and the City, CDCR and the Receiver shall have no further obligations to one another hereunder; or (2) to instruct the City to extend water service as set forth herein. If CDCR or the Receiver so instructs the City, then the City shall extend the identified water service pursuant to the terms of this Agreement without regard to whether the Out of Agency water service extension has been granted. If any litigation is filed naming the City as a party and challenging the City's right to extend the identified water service without the Out of Agency water extension approval, then CDCR and the Receiver shall defend, indemnify

and hold the City harmless with respect to such litigation. The City agrees to cooperate with CDCR and the Receiver in any such litigation.

1.b. Annexation: Concurrently with application for approval of Out-of-Agency water service to the CDCR Property, CDCR shall enter into a Deferred Annexation Agreement with the City in the form attached hereto as Exhibit 3, in implementation of City's Policy 900-1, to facilitate the provision of water service to the CDCR Property and to facilitate the City's policy of requiring annexation, when feasible, as a condition of agreeing to provide new water service to properties outside of the City. The Deferred Annexation Agreement shall provide that (1) the City, at its option, may apply to SJLAFCO for annexation of the CDCR Property at any time, but no sooner than five (5) years following the full occupancy of the CHCF. The term "full occupancy" is defined as the operation of the facility at 80% of total bed capacity (or 1585 beds of the total 1,722 beds); (2) the CDCR Property may only be rezoned to a "Public Facilities" (PF zone) or other similar use in recognition that the entire CDCR Property will be committed to correctional and other state uses for the foreseeable future; (3) CDCR agrees to address the environmental consequences, if any, of the potential annexation of the CDCR Property to the City in its Environmental Impact Report (EIR) for the Northern California Re-entry Facility (NCRF) and DeWitt Nelson projects; (4) CDCR will pay the City, not later than ninety (90) days after the full execution of the Design/Build contract for the CHCF, the sum of \$235,000, which sum shall be the total cost of all fees and costs for the respective SJLAFCO and City processing of rezoning and annexation and all fees and costs associated with the annexation of the CDCR Property to the City regardless of when such annexation occurs, if ever, and regardless of what environmental review costs, processing fees, impact fees, or exactions the City may require or determine necessary for annexation of the CDCR Property. Except for fees and charges contemplated in Section 2.c and Section 2.f of this Agreement, no additional fees or charges or impact fees shall be incurred by CDCR for the water service and/or annexation; and (5) the City acknowledges and accepts that the CDCR will advocate that the SJLAFCO refrain from detaching the CDCR property from the Montezuma Fire District and/or the Collegeville Fire District. Regardless of the determination of the fire service issue, CDCR shall not be required to pay any fees, costs or other impact fees to the City related to the provision of fire service to the CDCR property other than those fees and costs being paid to the fire district(s), at the time of annexation application, if any.

City further agrees that, in consideration of the terms of the Deferred Annexation Agreement as set forth above, and in further consideration for the settlement of the Litigation, the City will not comment on, or challenge, in any manner or in any judicial or administrative proceeding or forum, the adequacy of, or legal sufficiency of, the EIR for the NCRF and DeWitt Nelson projects, as such EIR relates to the annexation of the CDCR Property to the City and shall not sponsor, encourage, authorize, solicit, finance or otherwise assist the filing of an action by any third party, in any judicial or administrative forum challenging the adequacy of, or legal sufficiency of, such EIR. Nothing in this Agreement shall preclude the City from submitting comments pursuant to CEQA or challenging the legal sufficiency of the EIR for the NCRF and DeWitt Nelson Projects concerning physical environmental impacts of the NCRF and DeWitt Nelson Projects not related to the annexation of the CDCR Property to the City and the resultant boundary change of the City.

2. City Water.

2.a. City shall cooperate with Forward Landfill, Inc. in the construction of two water lines and installation of two water meters in Newcastle Road, one 24" diameter line ("Line A") and associated 12" diameter meter ("Meter 1") and one 16" diameter line ("Line B") and associated 12" diameter meter ("Meter 2"), to supply water for the CDCR Property, as depicted on Exhibit 4. The construction and meters shall be at no cost to CDCR.

2.b. All on-site water system infrastructure on the CDCR Property shall be owned and maintained by CDCR.

2.c. CDCR will not pay the City for any water service for a period of one year from the time of commencement of City water usage by CDCR on the CDCR Property. "Commencement" shall be deemed to occur when CDCR requests connection to the meter and the meter is installed. For years two and three CDCR will pay 20% and 30%, respectively, of the City's monthly water usage charges, in accordance with City's Water Rate Fees and Regulations at that time. For year four, CDCR shall pay 50% of the City's monthly water usage charges. Thereafter, payment shall escalate 10% per year for the next five years such that at the beginning of the ninth year CDCR will pay 100% of the applicable rate thereafter. The monthly water usage charges (or the applicable percentage thereof as discussed above under this paragraph) shall be based on the standard user charge for applicable municipal customers as established by

City Ordinance, Resolution, or Policy. The City Ordinance, Resolution or Policy shall not be amended to establish discriminatory rates. The monthly water usage charges shall not be adjusted more frequently than once in any twelve month period.

2.d. Unless the Water Board directs that the three contaminated wells (Wells #1, #2 and #3) must remain operable for monitoring purposes, CDCR will abandon and destroy these contaminated on-site water wells at no cost to the City. The City shall assist CDCR in securing well closure permits from the County.

2.e. CDCR retains the right to continue use of the existing well (Well #4) which is currently uncontaminated and will retain the right to drill, install, and operate new wells on the property in the event that CDCR, in its sole discretion, determines that additional wells are necessary for the operation of its facilities on the CDCR Property. CDCR acknowledges that if water from the remaining well, or from additional wells, is used on the Property, CDCR will be solely responsible for preventing, through the use of mechanical (e.g. air gaps) and operational means, any co-mixed City-supplied and well-supplied water, and/or any well supplied water from entering the City's water supply system. This will be accomplished through use of a backflow preventer located where the city municipal water line enters the CDCR property. This Agreement (or the provision of water by the City to the CDCR Property) does not prevent CDCR from mixing City water and CDCR well water for use on the CDCR Property, provided that the resultant mixed water meets applicable water quality standards and provided further that CDCR and the City have agreed that the CDCR backflow preventer is adequately designed to prevent any mixed water from entering the City's water supply system, which agreement will not be unreasonably withheld. All improvements made to the existing water distribution systems on the CDCR Property will be in conformance with Title 24 or City's applicable building code and other applicable codes and standards.

2.f. CDCR shall construct and pay for a 16" diameter water main in Arch Road and Austin Road (approximately 6,300 linear feet, traveling from the intersection of Logistics Drive with Arch Road and continuing eastward to Austin Road, and turning south to the point of the utility entrance to the CHCF site) ("Line C") with one water meter ("Meter 3") to provide for a looped system to serve the CDCR Property. Meter 3 will be sized as necessary to serve the CDCR Property (including, without limitation, the existing or planned facilities on the

CDCR Property) but shall be no larger than a 12" diameter meter and will be located near the entrance of the CHCF on Austin Road and/or in close proximity to the property line of the adjacent non-state-owned parcel immediately south of the CHCF. The City will reimburse CDCR for any oversizing of Line C (over 12 inches) per City policy. CDCR will pay the standard rates for connection fees as established by the Stockton Municipal Utilities Department Water Fee Schedule in effect at the time application for water service is made based upon the necessary meter size to serve the water demand for the facilities (the "Connection Fees"). It is agreed that the cost of the Connection Fees will be conclusively deemed to include any and all meters, surcharges for the recovery of capital fees and water distribution costs for regional water distribution systems and all other customary, nondiscriminatory charges and fees applicable to connection to the City's water system, including but not limited to, the City's standard connection fee, the Surface Water Fee (also known as the New Melones Water Conveyance Project Fee and the Water Supply Impact Mitigation Fee) and the Delta Water Supply Project Fee. Based on the City's current fee schedule, the estimated cost for the Connection Fees for a 12" diameter meter is approximately \$1.3 million dollars. CDCR shall pay the Connection Fees when the application for water service connection is submitted by CDCR to the City. City shall provide written confirmation to the County and CDCR that the Surface Water Fee, as defined above, has been paid in full to the agencies that receive that Fee. City and CDCR shall indemnify the County against any claim against the County that the Surface Water Fee, as defined above, has not been paid.

2.g. Upon installation of Line C, and installation of Meter 3 at the Austin Road connection as described above, the City may remove Meter 1 and associated connection to Line A (the 24 inch water main in Newcastle Road). At the election of CDCR and with CDCR's determination that the CDCR property and facilities located on the CDCR property require an additional meter and connection from Line C in Arch Road ("Meter 4"), the City will charge and CDCR will pay one-half of the cost of the customary Connection Fees at the time this water service connection is submitted by CDCR to the City.

3. **City Sewer Service to the CDCR Property.** The City commits to continue providing sewer service to the CDCR Property pursuant to the existing sewer service agreement through the duration of that agreement (through 2018). Beyond the date of expiration of that agreement, City commits to continue to provide sewer service to the CDCR Property at 800,000

gallons per day provided that CDCR pays the monthly user charge established for applicable municipal customers as lawfully established by City Ordinance, Resolution, or Policy. The City Ordinance, Resolution or Policy shall not be amended to establish discriminatory rates. The user charge shall not be adjusted more frequently than once in any twelve month period. The City and CDCR agree that sewer service to the CDCR Property predates the adoption of City Policy 900-1 and any requirement for SJLAFCO approval of Out of Agency service extensions and that, therefore, no additional approvals are required to continue City sewer service to the CDCR property.

If, as part of the construction planning for CDCR facilities on the CDCR Property, or during the subsequent operation of the CDCR facilities, it is established that the sewer service demand for the CDCR facilities exceeds 800,000 gallons per day, then CDCR shall apply to the City for the additional necessary capacity and pay the non-discriminatory sewer connection charges for the additional necessary capacity over 800,000 gallons per day and construct any necessary infrastructure imposed according to the City's ordinances, policies and standards in effect at the time of the request for the additional capacity. The City shall apply the fee schedule in effect at that time to determine the connection fees. CDCR shall be subject to any and all adjustments adopted City wide. It will be deemed established that the sewer service demand for the CDCR facilities during operation of the facilities exceeds 800,000 gallons per day if the City so determines based on substantial evidence provided through the flow recording meter(s) maintained by the City's Department of Municipal Utilities in accordance with the then existing permit.

V. CHCF LOCAL HIRE OUTREACH PLAN

A. During Construction. The Receiver and CDCR agree to require that Design/Build contract proposers include in their proposals a Contractor's Local Hire Outreach Program ("CLHOP") and require participation therein by all of their subcontractors. The Receiver and CDCR agree to require, as part of the request for proposals for the CHCF that the Design/Build proposers submit CLHOPs that show how the Design/Build proposer will implement the local hire provisions (and, thereafter, to require monitoring, reporting and auditing on the implementation of the CLHOP), as follows:

- (1) The Design/Build proposers shall be required to prepare and

comply with a CLHOP, which shall include the provisions set forth herein.

(2) The CLHOP shall constitute 5% of the total points that each proposal may receive as part of the evaluation process to selecting the Design/Build contractor.

(3) The Receiver and CDCR agree to include a non-voting member of the Request for Proposal Review Technical Advisory Sub-Committee that will be responsible for the review and ranking of proposals from the Design/Build proposers, including the CLHOP. This non-voting member shall be selected by the Petitioners. The non-voting member selected by the Petitioners shall be entitled to participate in any and all meetings and deliberations, except voting, of the Technical Advisory Sub-Committee. This non-voting member shall be subject to all rules applicable to the other members of the Technical Advisory Sub-Committee related to the review and ranking of proposals, including, but not limited to, confidentiality provisions.

(4) The CLHOP presented by the selected Design/Build proposer will be included in the Design/Build contract and will be monitored. The CLHOP will be a pay item or contract deliverable. The Design/Build contractor will be paid that certain amount if the Design/Build contractor fulfills the provisions of the CLHOP. In order to determine the amount of the pay item or contract deliverable, CDCR will do an evaluation of the level of effort it will take to do the mandatory requirements and then double that amount (for more efforts that are expected to come from the proposal) but in no event will the pay item or contract deliverable be more than \$500,000.

(5) At a minimum, the CLHOP shall include the following mandatory elements:

- (i) Designate Local Hire Administrator responsible for implementing local contracting, procurement and hiring plan.
- (ii) Coordinate with local and regional contractor associations including, but not limited to, the Builders Exchange of Stockton, the Building Industry of the Delta, and the Greater Stockton Chamber of Commerce, the City of Stockton and San Joaquin County to improve the likelihood

of receiving proposals from qualified local trade contractors.

- (iii) Provide local contractors with easy and timely access to plans, specifications and contract requirements to assist them in responding to solicitations.
- (iv) In coordination with the Greater Stockton Area Chamber of Commerce, conduct job information meetings in Stockton and San Joaquin County.
- (v) Provide ongoing assistance to San Joaquin County residents in completing job application forms.
- (vi) Conduct job application workshops in Stockton and San Joaquin County.
- (vii) Advertise jobs, job information meetings, workshops, job application centers in local public places such as Stockton City Hall, San Joaquin County Administrative Offices, libraries and post offices, and in local media including television, newspapers of general circulation and trade papers.
- (viii) Solicit known local subcontractors by telephone.

(6) Reporting. The Design/Build Contractor will report local hire statistics to CDCR monthly. CDCR will provide the local hire statistics to the Construction Oversight Committee at its monthly meeting.

(7) Construction Oversight Committee ("COC"). CDCR shall establish a COC, which shall consist of at least three (3) persons, with one member selected by each of the Petitioners. The COC may include other participants at the election of CDCR. The COC shall meet monthly with the Design/Build Contractor to monitor the Contractor's performance of the CLHOP. The COC shall terminate upon completion of the CHCF.

B. Vendor Outreach. CDCR shall provide training to Greater Stockton Chamber of Commerce (Chamber) staff regarding accessing the State's existing procurement

website. CDCR and the Chamber shall sponsor a yearly vendor fair during construction and for a minimum of five years after construction of the CHCF, the re-purposed DeWitt-Nelson facility and the planned Northern California Re-entry Facility (the re-purposed NCWF) are completed. Continuation of the vendor fair shall be reviewed every five years by the Citizen's Advisory Committee ("CAC"). (See Section VI, below.) The vendor fair will be continued for an additional five years unless the CAC and the Chamber vote in the affirmative to discontinue it. The vendor fair shall be coordinated with the Chamber which shall be an active participant in the organization and implementation of the vendor fair.

C. **Employee Outreach.** For Local Outreach during the Operation of the CHCF:

(1) CDCR will follow the "San Joaquin Local Human Resources Plan" ("Plan") as follows:

- (a) Conduct civil service job information and application workshops in Stockton and San Joaquin County.
- (b) Provide Institution tours.
- (c) Provide periodic job information releases to local newspapers and media outlets.
- (d) Visit local schools to provide information and assistance in how to apply for state civil service positions.
- (e) Attend local job fairs in order to provide information and assistance to prospective job candidates.
- (f) Conduct spot testing for open (non-promotional) civil service examinations in the Stockton/San Joaquin County area.
- (g) Designate a Community Resource Manager for implementation of local outreach and education.

- (h) Work with local community colleges to establish training programs to supply licensed applicants to the state for hire (*i.e.*, Psychiatric Technician, LVN, RN, etc.).
- (i) Establish working partnership with the Stockton Employment Development Department (EDD) office in order to enhance local recruitment efforts.
- (j) Establish a working partnership with city and county officials and community-based organizations, including the Greater Stockton Chamber of Commerce, in developing a localized recruitment effort.

(2) The Plan shall continue for five years after construction of the CHCF, the re-purposed DeWitt-Nelson facility and the planned Northern California Re-entry Facility (the re-purposed NCWF) are completed, at which time the continuation of the Plan shall be reviewed by the CAC. (See below.) The Plan will be continued for an additional five years unless the CAC votes in the affirmative to discontinue it. Thereafter, the Plan shall be reviewed at least every five years by the CAC and will be continued for an additional five year periods, unless the CAC votes in the affirmative to discontinue it.

VI. CITIZENS ADVISORY COMMITTEE ("CAC"); ANNUAL MEETING

1. The CDCR shall establish and maintain one CAC pursuant to Department Operations Manual ("DOM") section 101090.11.3 for the CHCF, the re-purposed DeWitt-Nelson facility and the Repurposed NCWF also called the Northern California Re-entry Facility ("NCRF") at the CDCR Property. The Chamber shall nominate at least three individuals to serve on the CAC. The Warden will select one of the Chamber nominees to fill one of the Warden's appointments to the CAC. As set forth in the DOM, the CAC will also include individuals nominated by the Board of Supervisors and the City Council, among others. The CAC, which shall meet quarterly, and will initiate its meeting schedule at the beginning of construction of the CHCF. Local legislators will be invited to attend the meetings. In each of the four years following the opening of a facility, CDCR will provide an analysis showing the distribution of employees' residences by zip code. CDCR will also provide an analysis of the value of goods and services purchased from vendors within the County with the goal of showing the

distribution, by zip code, of where goods and services for the facilities were purchased. In addition to the other functions of the CAC stated in the DOM and in this Agreement, the CAC shall consider any community concerns and issues related to the CDCR facilities, as may be raised by any member of the CAC and provide advice and input on responding to and improving community relationships between the CDCR facilities and the community.

VII. AB 900 COMMUNITY IMPACT MITIGATION FUNDS

Upon the initiation of construction, CDCR will make available a one-time distribution of community impact funds pursuant to Penal Code section 7005.5. This funding is based on \$800 for each bed within the design capacity of the proposed medical care facility, which is a total of 1,734 beds for a total payment of \$1,387,200. In accordance with the Penal Code section 7005.5, half of this amount will be provided to the “impacted local education agency” (San Joaquin County Board of Education for distribution at its discretion to district schools). The other half will be distributed to the impacted City and County after the appropriate resolutions are passed and agreements reached. Impacted local entity is defined as one “whose current approved sphere of influence includes the site.” It is the Receiver/CDCR’s understanding that the site is within the City of Stockton’s sphere of influence. The approximately \$700,000 will be distributed consistent with an agreement reached by San Joaquin County and the City of Stockton. The school district funds will be available upon the initiation of construction; the balance of funds will be released once the two local agencies have reached a distribution agreement and, if necessary, appropriate resolutions are passed.

VIII. CONTRACT WITH THE FIRE PROTECTION DISTRICT

The Receiver and CDCR are determining whether fire protection services will be provided to the CDCR Property through an on site fire station staffed by CDCR or through agreement with the applicable fire protection district. If the Receiver and CDCR agree that fire protection services will be provided through a fire protection district, the Receiver and CDCR will work with the applicable fire protection district to provide fire protection services to CHCF and the remainder of the CDCR Property. The appropriate District for CHCF appears to be the Montezuma Fire District. Fire prevention services to the CDCR Property will be provided by CDCR utilizing CDCR staff, including a fire captain or equivalent position, unless CDCR and the applicable fire protection district agree otherwise.

IX. CHAMBER'S ATTORNEYS' FEES; COVENANT NOT TO SUE

CDCR or the Receiver shall pay the Chamber of Commerce's portion of Petitioners' reasonable attorney's fees in connection with the Action, not to exceed seventy thousand dollars (\$70,000) from the 2009/2010 Budget Act, Item 5225-002-0001—Schedule 3 (For support of Department of Corrections and Rehabilitation: Schedule: (3) 50.10-Medical Services—Adult). The Respondents shall not pay any other parties' attorneys fees and shall not pay any of Petitioners' costs. The payment of fees to the Chamber is contingent upon the Chamber fully executing an Agreement and Covenant Not to Sue with CDCR and/or the Receiver with respect to CDCR's other two proposed projects in Stockton, which are (1) the re-purposed DeWitt Nelson facility and (2) the re-purposed Northern California Women's Facility (NCWF), also known as the new Re-Entry Facility or the Northern California Re-Entry Facility (NCRF), in the form attached hereto as Exhibit 5 and delivering such Agreement and Covenant to CDCR and the Receiver. Respondents will waive the approximate \$85,000 in costs for preparing the administrative record as to all Petitioners. Respondents will make the payment as set forth in this section within fifteen (15) days after this Settlement Agreement is executed by all the Parties, the request for dismissal with prejudice is executed by all the Petitioners, and the Covenant Not to Sue is executed by the Chamber and delivered to Respondents.

3. Dismissal of Action. Subject to continuing jurisdiction of the Court to enforce this Agreement, Petitioners shall prepare a Dismissal of the Litigation with prejudice ("Dismissal"). The Dismissal shall be filed with the Court within ten (10) days following the Effective Date of this Agreement.

4. Releases. Immediately upon execution of this Agreement, the General Release provided for herein shall become effective and legally binding.

a. General Release and Waiver. Each Petitioner hereby releases each and every Respondent and each Respondent hereby releases each and every Petitioner to and from any and all claims, actions, causes of action, obligations, costs, damages, losses, liabilities and demands, of whatever kind and nature, in law or equity, in contract, tort or otherwise, past, present, future, known or unknown, contingent or non-contingent, anticipated or unanticipated, suspected or unsuspected, which any such party now has, ever had, or may have in the future arising directly or indirectly out of, based on, relating to or connected in any way with the

approval of the CHCF Project and its EIR, the Petition, and the causes of action raised in the Petition (collectively, the "Litigation"), subject to paragraph 6.

b. The Parties acknowledge and agree that this Agreement is a complete general release of the Litigation. Each party understands that it is possible that an unknown injury, damage, diminution or loss, action, suit, lien, theory of recovery, lawsuit, claim, or cause of action arising out of or related to the Litigation may exist which, if known by any of the Parties, would have materially affected their decision to release and discharge the unknown claim as set forth herein. Each of the Parties expressly acknowledges that it took that possibility into account in determining the consideration given and accepted for entering into this Agreement and each expressly waives California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

5. Counterparts. This Agreement may be executed in counterparts, and together the counterparts shall be deemed as one original Agreement.

6. Exception to Release. Nothing herein shall be construed as a release by any Party of any obligation or claim that arises out of a breach of this Agreement. Nothing contained herein shall be deemed to release, discharge or otherwise affect any of the rights or duties of the parties hereto under this Agreement or any document executed in connection with or incorporated into this Agreement. Nothing herein shall be construed to release, discharge or otherwise affect any rights or claims of the parties hereto against non-parties to this Agreement, including, but not limited to any rights or claims of any of the Respondents against Forward Landfill, Inc. under the Regional Water Quality Control Board's cleanup and abatement order and/or any law or regulations applicable to the groundwater contamination, remediation, and/or the provision of potable water to the CDCR Property.

7. Warranty of Authority. Each individual signing this Agreement represents and warrants that he or she has the power and authority to bind the entity or individual on behalf of whom he or she is signing. The Parties each understand that the other is relying on this representation in entering into this Agreement.

8. California Law. This Agreement shall be construed and enforced pursuant to the laws of the State of California. This document shall not presumptively be construed against any Party preparing it.

9. Written Modifications Only. The terms of this Agreement shall not be modified or amended except in writing, signed by all parties or their designated representatives for such purpose.

10. Enforcement. The terms of this Agreement are contractual, not merely recitals. This Agreement is the result of negotiations between the Parties. In any action or proceeding arising out of, or based upon, this Agreement, the prevailing party shall be entitled to recover, in addition to costs and other expenses, its reasonable attorneys' fees incurred in connection with such action or proceeding.

11. Retention of Jurisdiction. The United States District Court, Eastern District of California, shall retain jurisdiction to adjudicate any matters which may arise as a result of disputes over the terms, conditions, enforcement of, or interpretation of this Agreement.

12. Integrated Agreement. It is understood and agreed that this Agreement contains the entire agreement among the parties. The terms of this Agreement comprise the final expression of the understanding of the Parties with respect to its terms. This Agreement comprises a completely integrated contract.

13. Effective Date. This Agreement shall become effective immediately following execution by all of the Parties on the latest date appearing below.

14. Time is of the Essence. Time is of the essence in this Agreement.

15. No Admission of Liability. It is understood and agreed that this Agreement is the compromise of disputed claims made by Petitioners, and that the terms of this Agreement are not to be construed as an admission of liability on the part of Respondents, who expressly deny any such liability.

16. Advice of Counsel. Each Party has been represented by the attorney of that Party's choice with respect to the matters that are the subject of this Agreement and has been advised with respect to the rights and obligations that the Party assumes by executing this Agreement and is aware of the content and legal effect of this Agreement.

IT IS HEREBY AGREED:

Dated: 8/2, 2010

Greater Stockton Chamber of Commerce

By: [Signature]
Rich Goucher
President

Dated: 8/2, 2010

City of Stockton

By: [Signature]

Dated: Aug 2, 2010

County of San Joaquin

By: [Signature]
Receiver

Dated: Aug 2, 2010

Receiver

By: [Signature]
J. Clark Kelso, Receiver

Dated: Aug 2, 2010

California Prison Healthcare
Receivership Corp.

By: [Signature]
J. Clark Kelso, President

Dated: Aug 2, 2010

State of California Department of
Corrections and Rehabilitation

By: [Signature]
Matthew L. Cate, Secretary

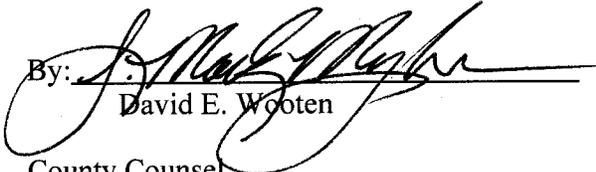
Approved as to Form:

Herum Crabtree

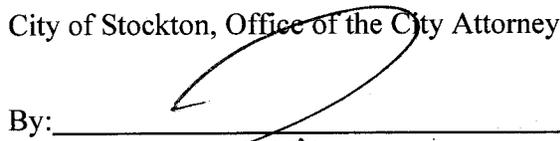
By: [Signature]
Steven A. Herum

Attorney for Petitioners Greater Stockton Chamber of Commerce,
County of San Joaquin and City of Stockton

County of San Joaquin, Office of the County Counsel

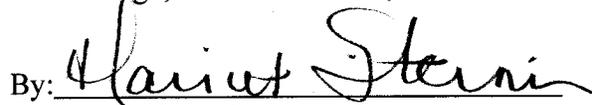
By: 
David E. Wooten
County Counsel

City of Stockton, Office of the City Attorney

By: 
John M. Lucbberke

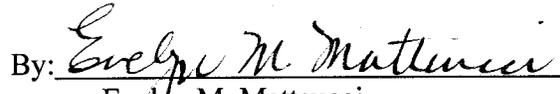
Interim City Attorney

McDonough, Holland & Allen, PC

By: 
Harriet A. Steiner

Attorney for Respondents J. Clark Kelso, Receiver,
and California Prison Healthcare Receivership, Corp.

Receiver's Office of Legal Affairs

By: 
Evelyn M. Matteucci

Chief Counsel, Construction
Office of the Receiver

Miller Starr Regalia

By: 
Arthur F. Coon

Attorney for Respondent State of California Department
of Corrections and Rehabilitation

EXHIBIT 1

County Rights of Way Technical Items

1. An encroachment permit shall be required for all work within road right-of-way. Standard adopted county Plan Check fees and an Field Inspection Fees shall be paid for work in the county rights of way.
2. Dedication to result in a 30-foot wide right-of-way from the centerline of Austin Road to the property line shall be required in conformance with the standards for one half of a 60-foot right-of-way Rural Collector, plus an additional eighteen (18') foot irrevocable offer of dedication based on the City of Stockton's General Plan ultimate right-of-way for Austin Road, shall be required from the Arch Road-Austin Road intersection to the project's southerly boundary.
3. Frontage improvements on Austin Road shall be constructed in conformance with the standards for one half of a 60-foot right of way Rural Collector Road including streetlights, if required, from the Arch Road-Austin Road intersection to the project's southerly boundary.
4. Additional requirements on Austin Road to include:
 - A traffic signal at the project entrance.
 - Acceleration/deceleration and northbound turn lanes at the project entrance.
 - Dedication of sufficient right-of-way to accommodate these improvements.
5. Building setbacks shall be based upon required dedications along Austin Road.
6. The driveway approaches on Austin Road shall be improved in accordance with the requirements of San Joaquin County Standards R-17.
7. All offsite improvements shall be in conformance with the current Improvement Standards and Specifications of the County of San Joaquin. The improvement plans and specifications are subject to plan check, field inspection fees (per Attachment A) and must be approved by the County of San Joaquin Department of Public Works. (Development Title Section 9-240, Section 9-910, Section 9-1100 and R-92-814).
8. All traffic signs and markings shall conform to the latest version of the Manual on Uniform Traffic Control Devices, and/or San Joaquin County Standards and shall be shown on the improvement plans. Improvement plans shall specifically show signing and striping on Austin Road and at the intersection of Austin Road and Arch Road. (Development Title Section 9-1150.2) (Development Title Section 9-1150.2)

9. Prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) meeting the requirements of the current State Water Resources Control Board (SWRCB) Waste Discharge Requirements (WDRs) for Discharges of Stormwater Runoff Associated with Construction activity (General Permit). Developer shall submit the SWPPP to San Joaquin County Public Works for approval. A copy of the approved SWPPP and all required records, updates, test results and inspection reports shall be maintained on the construction site and be available for review by any County, State or Federal employee on demand. Developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). The Waste Discharge Identification Number (WDID), issued by the SWRCB shall be submitted to San Joaquin County Public Works.

ATTACHMENT A

Plan Check Fees			
Plan Check Fees (1st \$150,000)	7.22%	% of Project Cost	7.22%
Plan Check Fees (\$150,001 to \$400,000)	4.20%	% of Project Cost	4.20%
Plan Check Fees (Over \$400,000)	1.95%	% of Project Cost	1.95%
Field Inspection Fees			
Field Inspection Fees (up to \$200,000)	8.86%	% of Project Cost	8.86%
Field Inspection Fees (\$200,001 to \$500,000)	3.85%	% of Project Cost	3.85%
Field Inspection Fees (\$500,001 to \$1,000,000)	2.75%	% of Project Cost	2.75%
Field Inspection Fees (over \$1,000,000)	2.25%	% of Project Cost	2.25%

Plan check and inspection fees are based on the costs of offsite improvements.

EXHIBIT 2

Exhibit 2 of this Settlement Agreement, San Joaquin General Hospital Agreement, No. 10-01088, between the San Joaquin County and the California Department of Corrections and Rehabilitation ("CDCR") is exempt from disclosure to the public under the California Public Records Act, Government Code section 6254.14.

For more information or inquiries regarding this Agreement, please contact the CDCR Public Records Act Unit or the Clerk of the Board of Supervisors of San Joaquin County.

EXHIBIT 3

When recorded return to:
Carolyn Avra
City of Stockton
Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206

MUNICIPAL UTILITIES DEPARTMENT
After signing Transmit Copy to:

- CDCR
- Community Development Director
- Public Works Director
- City Clerk (Original)

OWNER NAME(S)
(as shown on deed)

MAILING ADDRESS

PROPERTY ADDRESS

**ASSESSOR PARCEL
NUMBER**

CITY OF STOCKTON

DEFERRED ANNEXATION AGREEMENT

This Deferred Annexation Agreement is entered into this _____ day of _____, 2010, by and between the State of California, acting through the Department of Corrections and Rehabilitation, hereinafter referred to as "CDCR" and the City of Stockton, hereinafter referred to as "CITY."

WHEREAS, CDCR is the owner of certain real property located within the unincorporated area of San Joaquin County, as shown on the attached Exhibit A; and

WHEREAS, CDCR and CITY have agreed that CITY will provide CITY water service to the CDCR property as set forth in that certain Settlement Agreement dated _____ (Settlement Agreement); and

WHEREAS, the CITY has provided sewer service to the CDCR Property since 1964, and will continue to provide sewer service to the CDCR Property; and

WHEREAS, in furtherance of the Settlement Agreement and the provision of water service, CDCR has filed an application with the CITY for water service outside the corporate boundaries of the CITY; and

WHEREAS, as set forth in the Settlement Agreement, CDCR has agreed that CITY may annex the CDCR Property if it is feasible to do so; and

WHEREAS, the City and CDCR have agreed that the City will not pursue annexation of the CDCR Property for at least five (5) years from the date of full occupancy of the CHCF, as defined in the Settlement Agreement, and thereafter, may determine if or when, the CITY would annex the CDCR Property to the CITY; and

WHEREAS, water service to the CDCR property is necessary in the interest of the public health at this time; and.

NOW, THEREFORE, the parties have agreed as follows:

1. As set forth in the Settlement Agreement, the relevant portions of which are attached hereto as Exhibit B, CITY will connect the CDCR Property to the City water system and provide CITY water service to the CDCR Property, upon CDCR's request for connection.

2. In accordance with the Settlement Agreement, after commencement of CITY water service, CDCR will pay CITY monthly water usage charges, or portions thereof, for CITY water delivered to the CDCR Property.

3. CDCR will notify CITY in writing if the CDCR Property undergoes a transfer in ownership. Notification shall be made by depositing a written notice in the U. S. Mail, postage prepaid, addressed as follows: Director of Municipal Utilities, City of Stockton, 425 North El Dorado Street, Stockton, CA 95202.

4. Subject to, and in accordance with, the terms and conditions of the Settlement Agreement and this Agreement, CDCR hereby consents to the annexation of the CDCR Property to the City of Stockton. CDCR hereby waives any right to protest the annexation and assigns to the CITY any right to vote on the annexation. As set forth in the Settlement Agreement, CDCR makes this consent and waiver on the express condition that CDCR is not, and shall not be, subject to any charges, fees, impact fees or exactions by reason of this consent and/or to the annexation of the property to the CITY.

5. The City, at its option, may apply to San Joaquin Local Agency Formation Commission (SJLAFCO) for annexation of the CDCR Property at any time, but no sooner than

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

EXCERPTS FROM SETTLEMENT AGREEMENT

I. CITY OF STOCKTON ANNEXATION, WATER AND SEWER AGREEMENTS

A. San Joaquin Local Agency Formation Commission ("SJLAFCO"):

Out of Agency Water Agreement and Annexation.

CDCR has agreed to seek SJLAFCO approval in order to facilitate the water delivery infrastructure originally proposed by Forward Landfill Inc. in its effort to comply with the Central Valley Regional Water Quality Control Board Cleanup and Abatement Order No. 5-2008-0714, dated December 8, 2008 directing Forward Landfill to provide the CDCR Property with drinking water.

1.a. Water Service: CDCR shall apply to the City for an Out of Agency water extension from SJLAFCO for authorization to allow the City to provide water service to the CDCR Property. CDCR will be responsible to pay for the City's application fee and the applicable SJLAFCO processing fee. These fees will be based on the administrative costs of such actions by the respective agencies. The respective applications will be filed not later than 30 days after project approval by the State Public Works Board ("PWB"). However, the applications may be filed at any earlier time that CDCR and the Receiver determine is appropriate. The City agrees to diligently pursue SJLAFCO approval of the authority to provide the water service. The City will support and advocate for the application to SJLAFCO for the Out of Agency water service extension approval. San Joaquin County will not oppose the Out of Agency water service extension.

At CDCR's request, SJLAFCO has determined that the processing fees and other costs that SJLAFCO may charge CDCR for the Out of Agency water extension shall not exceed \$13,500. The total cost of all fees and costs for the City processing of the Out of Agency water extension set forth in this section 1.a, shall not exceed \$35,000 in total (the \$35,000 includes only the City's processing fees and costs for the Out of Agency water extension application to SJLAFCO, and does not include SJLAFCO's fees and costs, as set forth above). If the City's costs for the Out of Agency water extension application and approval exceed \$35,000 in total, the City shall pay any amount in excess of \$35,000. Except as provided in this Paragraph 1.a, no

additional fees or charges or impact fees shall be incurred by CDCR for the Out of Agency water extension.

Notwithstanding the foregoing, if SJLAFCO denies the Out of Agency water service extension, then CDCR and the Receiver shall have the option, at their discretion, (1) to terminate this Agreement as to the City, in which case the City's lawsuit (*Greater Stockton Chamber, et al v. J. Clark Kelso, et al.* Eastern District of California, Case No. 2:09-cv-03308-LKK-JFM) may proceed as to the City only, and the City, CDCR and the Receiver shall have no further obligations to one another hereunder; or (2) to instruct the City to extend water service as set forth herein. If CDCR or the Receiver so instructs the City, then the City shall extend the identified water service pursuant to the terms of this Agreement without regard to whether the Out of Agency water service extension has been granted. If any litigation is filed naming the City as a party and challenging the City's right to extend the identified water service without the Out of Agency water extension approval, then CDCR and the Receiver shall defend, indemnify and hold the City harmless with respect to such litigation. The City agrees to cooperate with CDCR and the Receiver in any such litigation.

1.b. Annexation: Concurrently with application for approval of Out-of-Agency water service to the CDCR Property, CDCR shall enter into a Deferred Annexation Agreement with the City in the form attached hereto as Exhibit 3, in implementation of City's Policy 900-1, to facilitate the provision of water service to the CDCR Property and to facilitate the City's policy of requiring annexation, when feasible, as a condition of agreeing to provide new water service to properties outside of the City. The Deferred Annexation Agreement shall provide that (1) the City, at its option, may apply to SJLAFCO for annexation of the CDCR Property at any time, but no sooner than five (5) years following the full occupancy of the CHCF. The term "full occupancy" is defined as the operation of the facility at 80% of total bed capacity (or 1585 beds of the total 1,722 beds); (2) the CDCR Property may only be rezoned to a "Public Facilities" (PF zone) or other similar use in recognition that the entire CDCR Property will be committed to correctional and other state uses for the foreseeable future; (3) CDCR agrees to address the environmental consequences, if any, of the potential annexation of the CDCR Property to the City in its Environmental Impact Report (EIR) for the Northern California Re-entry Facility (NCRF) and DeWitt Nelson projects; (4) CDCR will pay the City, not later

than ninety (90) days after the full execution of the Design/Build contract for the CHCF, the sum of \$235,000, which sum shall be the total cost of all fees and costs for the respective SJLAFCO and City processing of rezoning and annexation and all fees and costs associated with the annexation of the CDCR Property to the City regardless of when such annexation occurs, if ever, and regardless of what environmental review costs, processing fees, impact fees, or exactions the City may require or determine necessary for annexation of the CDCR Property. Except for fees and charges contemplated in Section 2.c and Section 2.f of this Agreement, no additional fees or charges or impact fees shall be incurred by CDCR for the water service and/or annexation; and (5) the City acknowledges and accepts that the CDCR will advocate that the SJLAFCO refrain from detaching the CDCR property from the Montezuma Fire District and/or the Collegeville Fire District. Regardless of the determination of the fire service issue, CDCR shall not be required to pay any fees, costs or other impact fees to the City related to the provision of fire service to the CDCR property other than those fees and costs being paid to the fire district(s), at the time of annexation application, if any.

City further agrees that, in consideration of the terms of the Deferred Annexation Agreement as set forth above, and in further consideration for the settlement of the Litigation, the City will not comment on, or challenge, in any manner or in any judicial or administrative proceeding or forum, the adequacy of, or legal sufficiency of, the EIR for the NCRF and DeWitt Nelson projects, as such EIR relates to the annexation of the CDCR Property to the City and shall not sponsor, encourage, authorize, solicit, finance or otherwise assist the filing of an action by any third party, in any judicial or administrative forum challenging the adequacy of, or legal sufficiency of, such EIR. Nothing in this Agreement shall preclude the City from submitting comments pursuant to CEQA or challenging the legal sufficiency of the EIR for the NCRF and DeWitt Nelson Projects concerning physical environmental impacts of the NCRF and DeWitt Nelson Projects not related to the annexation of the CDCR Property to the City and the resultant boundary change of the City.

2. City Water.

2.a. City shall cooperate with Forward Landfill, Inc. in the construction of two water lines and installation of two water meters in Newcastle Road, one 24" diameter line ("Line A") and associated 12" diameter meter ("Meter 1") and one 16" diameter line ("Line B")

and associated 12" diameter meter ("Meter 2"), to supply water for the CDCR Property, as depicted on Exhibit 4. The construction and meters shall be at no cost to CDCR.

2.b. All on-site water system infrastructure on the CDCR Property shall be owned and maintained by CDCR.

2.c. CDCR will not pay the City for any water service for a period of one year from the time of commencement of City water usage by CDCR on the CDCR Property. "Commencement" shall be deemed to occur when CDCR requests connection to the meter and the meter is installed. For years two and three CDCR will pay 20% and 30%, respectively, of the City's monthly water usage charges, in accordance with City's Water Rate Fees and Regulations at that time. For year four, CDCR shall pay 50% of the City's monthly water usage charges. Thereafter, payment shall escalate 10% per year for the next five years such that at the beginning of the ninth year CDCR will pay 100% of the applicable rate thereafter. The monthly water usage charges (or the applicable percentage thereof as discussed above under this paragraph) shall be based on the standard user charge for applicable municipal customers as established by City Ordinance, Resolution, or Policy. The City Ordinance, Resolution or Policy shall not be amended to establish discriminatory rates. The monthly water usage charges shall not be adjusted more frequently than once in any twelve month period.

2.d. Unless the Water Board directs that the three contaminated wells (Wells #1, #2 and #3) must remain operable for monitoring purposes, CDCR will abandon and destroy these contaminated on-site water wells at no cost to the City. The City shall assist CDCR in securing well closure permits from the County.

2.e. CDCR retains the right to continue use of the existing well (Well #4) which is currently uncontaminated and will retain the right to drill, install, and operate new wells on the property in the event that CDCR, in its sole discretion, determines that additional wells are necessary for the operation of its facilities on the CDCR Property. CDCR acknowledges that if water from the remaining well, or from additional wells, is used on the Property, CDCR will be solely responsible for preventing, through the use of mechanical (e.g. air gaps) and operational means, any co-mixed City-supplied and well-supplied water, and/or any well supplied water from entering the City's water supply system. This will be accomplished through use of a backflow preventer located where the city municipal water line enters the

CDCR property. This Agreement (or the provision of water by the City to the CDCR Property) does not prevent CDCR from mixing City water and CDCR well water for use on the CDCR Property, provided that the resultant mixed water meets applicable water quality standards and provided further that CDCR and the City have agreed that the CDCR backflow preventer is adequately designed to prevent any mixed water from entering the City's water supply system, which agreement will not be unreasonably withheld. All improvements made to the existing water distribution systems on the CDCR Property will be in conformance with Title 24 or City's applicable building code and other applicable codes and standards.

2.f. CDCR shall construct and pay for a 16" diameter water main in Arch Road and Austin Road (approximately 6,300 linear feet, traveling from the intersection of Logistics Drive with Arch Road and continuing eastward to Austin Road, and turning south to the point of the utility entrance to the CHCF site) ("Line C") with one water meter ("Meter 3") to provide for a looped system to serve the CDCR Property. Meter 3 will be sized as necessary to serve the CDCR Property (including, without limitation, the existing or planned facilities on the CDCR Property) but shall be no larger than a 12" diameter meter and will be located near the entrance of the CHCF on Austin Road and/or in close proximity to the property line of the adjacent non-state-owned parcel immediately south of the CHCF. The City will reimburse CDCR for any oversizing of Line C (over 12 inches) per City policy. CDCR will pay the standard rates for connection fees as established by the Stockton Municipal Utilities Department Water Fee Schedule in effect at the time application for water service is made based upon the necessary meter size to serve the water demand for the facilities (the "Connection Fees"). It is agreed that the cost of the Connection Fees will be conclusively deemed to include any and all meters, surcharges for the recovery of capital fees and water distribution costs for regional water distribution systems and all other customary, nondiscriminatory charges and fees applicable to connection to the City's water system, including but not limited to, the City's standard connection fee, the Surface Water Fee (also known as the New Melones Water Conveyance Project Fee and the Water Supply Impact Mitigation Fee) and the Delta Water Supply Project Fee. Based on the City's current fee schedule, the estimated cost for the Connection Fees for a 12" diameter meter is approximately \$1.3 million dollars. CDCR shall pay the Connection Fees when the application for water service connection is submitted by CDCR to the City. City shall provide written confirmation to the County and CDCR that the Surface Water Fee, as defined

above, has been paid in full to the agencies that receive that Fee. City and CDCR shall indemnify the County against any claim against the County that the Surface Water Fee, as defined above, has not been paid.

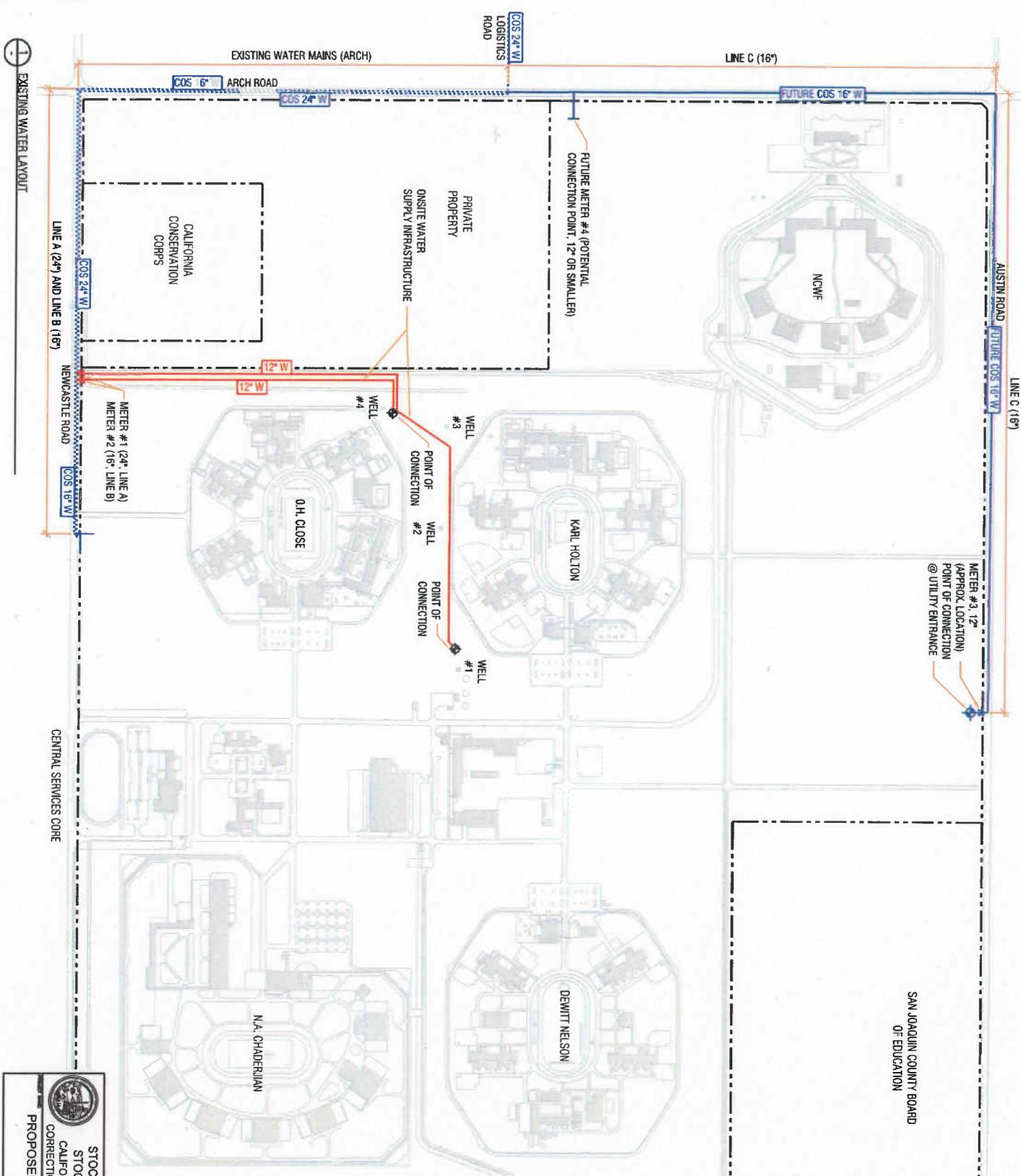
2.g. Upon installation of Line C, and installation of Meter 3 at the Austin Road connection as described above, the City may remove Meter 1 and associated connection to Line A (the 24 inch water main in Newcastle Road). At the election of CDCR and with CDCR's determination that the CDCR property and facilities located on the CDCR property require an additional meter and connection from Line C in Arch Road ("Meter 4"), the City will charge and CDCR will pay one-half of the cost of the customary Connection Fees at the time this water service connection is submitted by CDCR to the City.

3. **City Sewer Service to the CDCR Property.** The City commits to continue providing sewer service to the CDCR Property pursuant to the existing sewer service agreement through the duration of that agreement (through 2018). Beyond the date of expiration of that agreement, City commits to continue to provide sewer service to the CDCR Property at 800,000 gallons per day provided that CDCR pays the monthly user charge established for applicable municipal customers as lawfully established by City Ordinance, Resolution, or Policy. The City Ordinance, Resolution or Policy shall not be amended to establish discriminatory rates. The user charge shall not be adjusted more frequently than once in any twelve month period. The City and CDCR agree that sewer service to the CDCR Property predates the adoption of City Policy 900-1 and any requirement for SJLAFCO approval of Out of Agency service extensions and that, therefore, no additional approvals are required to continue City sewer service to the CDCR property.

If, as part of the construction planning for CDCR facilities on the CDCR Property, or during the subsequent operation of the CDCR facilities, it is established that the sewer service demand for the CDCR facilities exceeds 800,000 gallons per day, then CDCR shall apply to the City for the additional necessary capacity and pay the non-discriminatory sewer connection charges for the additional necessary capacity over 800,000 gallons per day and construct any necessary infrastructure imposed according to the City's ordinances, policies and standards in effect at the time of the request for the additional capacity. The City shall apply the fee schedule in effect at that time to determine the connection fees. CDCR shall be subject to any and all

adjustments adopted City wide. It will be deemed established that the sewer service demand for the CDCR facilities during operation of the facilities exceeds 800,000 gallons per day if the City so determines based on substantial evidence provided through the flow recording meter(s) maintained by the City's Department of Municipal Utilities in accordance with the then existing permit.

EXHIBIT 4



LINE A = 24" NEWCASTLE
 LINE B = 16" NEWCASTLE
 LINE C = 16" ARCH AND AUSTIN



STOCKTON MASTER PLAN
 STOCKTON, CALIFORNIA
 CALIFORNIA DEPARTMENT OF
 CORRECTIONS AND REHABILITATION

PROPOSED 16" MAIN

KITCHELL
 Civil Engineering, Inc.
 2750 Gateway Drive
 Sacramento, CA 95833
 (916) 484-7700

DATE: 3/27/11
 DRAWN BY: AS
 SCALE: AS SHOWN

C5

EXHIBIT 5

COVENANT NOT TO SUE

This Covenant Not to Sue is entered into this _____ day of _____, 2010 by and among the Greater Stockton Chamber of Commerce, J. Clark Kelso, in his capacity as Receiver, the California Prison Healthcare Receivership Corporation, and the California Department of Corrections and Rehabilitation who agree as follows:

RECITALS

A. WHEREAS, the Greater Stockton Chamber of Commerce ("Chamber"), the City of Stockton and the County of San Joaquin (collectively "Petitioners") filed a petition for writ of mandate against J. Clark Kelso, in his capacity as Receiver ("Receiver"), the California Prison Healthcare Receivership Corporation ("CPR"), and the California Department of Corrections and Rehabilitation ("CDCR") (referred to collectively as Respondents) in the Superior Court of San Joaquin County (*Greater Stockton Chamber of Commerce, et al. v. J. Clark Kelso, et al.*, Case No. 39-2009-230310-CU-WM-STK), alleging that Respondents' certification of the Final EIR and approval of the CHCF Project violated CEQA and Respondents thereafter removed the case to the United States District Court, Eastern District of California and the case is now before Judge Lawrence K. Karlton for all further proceedings (Case No. 2:09-cv-03308-LKK-JFM) (the "Litigation"); and

B. WHEREAS, the Parties (the Petitioners and the Respondents, collectively) have agreed to settle the Litigation and the Parties have entered into a Settlement Agreement; and

C. WHEREAS, the Settlement Agreement provides that the Chamber will provide a covenant not to sue, as set forth herein; and

D. WHEREAS, the Settlement Agreement provides that CDCR and/or the Receiver, upon receipt of an executed Covenant Not to Sue from the Chamber, shall proceed to pay to the

Chamber, the Chamber's portion of Petitioners' reasonable attorney's fees, not to exceed seventy thousand dollars (\$70,000.00).

Now, therefore, the Chamber ("Covenantor"), CDCR, CPR and the Receiver (collectively "Covenantees") hereby covenant as follows:

SECTION ONE

COVENANT NOT TO SUE

Covenantor will not institute, prosecute, or pursue or threaten to institute, prosecute or pursue any action, suit or other proceeding, whether judicial or administrative, at law or in equity, against any, or all, of the Covenantees, jointly or severally, nor institute, prosecute or pursue or in any way aid in the institution, prosecution or pursuit of any claim, demand, action, or cause of action for injunctive or declaratory relief, damages, costs, loss of services, expenses, or compensation for or on account of any damage, loss or injury either to person or property, or both, whether developed or undeveloped, resulting or to result, known or unknown, past, present or future, which is based upon, arises out of, or is in any way related to the Environmental Impact Report (EIR) for, and/or the approval of, either, or both, of the two new and/or re-purposed facilities: 1) the re-purposed De Witt Nelson facility and 2) the re-purposed Northern California Women's Facility (NCWF) facility, also know as the new Re-Entry facility or the Northern California Re-Entry Facility (NCRF).

SECTION TWO

PAYMENT NOT AN ADMISSION

It is understood by Covenantor that the payment made hereunder is in compromise of the Litigation, described above, and in consideration of the covenant not to sue contained herein, and is not to be construed as an admission of liability on the part of Covenantees, or any of them, which liability has been expressly denied.

SECTION THREE

RESERVATION OF RIGHTS

Except as provided in the Settlement Agreement, Covenantor expressly reserves all rights of action, claims and demands against any and all persons other than Covenantees. This instrument is a covenant not to sue, and not a release.

SECTION FOUR

BINDING EFFECT OF COVENANT

This covenant shall inure to the benefit of Covenantees, jointly and severally, and their legal representatives, agents, assignees and successors, including, but not limited to, any future receiver, director, secretary, or other person appointed to oversee the operations of CDCR or to oversee medical services provided to inmates under the jurisdiction of CDCR. This covenant shall bind Covenantor, and its legal representatives, agents, assignees, and successors.

SECTION FIVE

ENTIRETY CLAUSE

This instrument reflects the entire covenant between Covenantor and Covenantees, and no statements, promises or inducements made by Covenantor or any agent of any Covenantor which are not contained in this covenant not to sue shall be valid or binding. This covenant supplements but does not replace the Settlement Agreement, which shall remain in full force and binding against and among the parties to the Settlement Agreement.

SECTION SIX

COVENANT UNDERSTOOD BY COVENANTOR

Covenantor has carefully read the foregoing covenant not to sue and knows and understands the content thereof.

SECTION SEVEN

AUTHORITY TO EXECUTE

Covenantor warrants that the person or persons signing below have the full and complete authority to bind the Covenantor to this Covenant.

SECTION EIGHT

COMMENTS ON THE EIR AND PROJECT APPROVAL FOR DE WITT NELSON AND NCRF

Except as provided in this Covenant, this Covenant shall not prevent, limit or restrict the right of the Covenantor from participating in the administrative process regarding review of the EIR by providing oral or written comments on the EIR and/or on the approval of the re-purposed De Witt Nelson facility and/or the re-purposed Northern California Women's Facility (NCWF) facility, also know as the new Re-Entry facility or the Northern California Re-Entry Facility (NCRF), either individually or collectively.

SECTION NINE

PAYMENT

In consideration of this Covenant, Covenantees shall pay to the Covenantor the sum of seventy thousand dollars (\$70,000) within 15 days of receipt by Covenantor of execution of this Covenant by Covenantor, execution of the Settlement Agreement by all the Parties to the Litigation and receipt by the Covenantees of a request for dismissal of the Litigation with prejudice executed by the Parties, whichever occurs last.

In witness whereof, Covenantor has executed this Agreement and Covenant at _____ (designate place of execution) and CDCR, CPR and the Receiver have executed this Agreement and Covenant at Sacramento, California, as of the day and year stated below.

Dated: _____, 2010

Greater Stockton Chamber of Commerce

By: _____
Rick Goucher, President

Dated: _____, 2010

Receiver

By: _____
J. Clark Kelso, Receiver

Dated: _____, 2010

**California Prison Healthcare
Receivership Corp.**

By: _____
J. Clark Kelso, President

Dated: _____, 2010

**State of California Department of
Corrections and Rehabilitation**

By: _____
Matthew L. Cate, Secretary

Approved as to Form:

Herum Crabtree

By: _____
Steven A. Herum

Attorney for Petitioner Greater Stockton Chamber of Commerce,

McDonough, Holland & Allen, PC

By: _____
Harriet A Steiner

Attorney for Respondents J. Clark Kelso, Receiver,
and California Prison Healthcare Receivership, Corp.

Receiver's Office of Legal Affairs

By: _____
Evelyn M. Matteucci

Chief Counsel, Construction
Office of the Receiver

Miller Starr Regalia

By: _____
Arthur F. Coon

Attorney for Respondent State of California Department
of Corrections and Rehabilitation