

## LIMITED PUBLIC OFFERING

The Certificates are being offered solely to sophisticated institutional investors, as defined herein.

### NEW ISSUE

In the opinion of Winstead Sechrest & Minick P.C., Dallas, Texas, Special Tax Counsel, based on existing statutes, regulations, rulings and court decisions, and assuming, among other matters, compliance with certain covenants, the component of each Rental Payment designated as and evidencing and representing interest paid by the County of Newton, Texas (the "County") under the Lease Agreement and received by the Owners of the Certificates is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, except that interest on the Certificates will be included in the "adjusted net book value" or the "adjusted current earnings" of certain corporations for purposes of computing the alternative minimum tax and the environmental tax imposed on such corporations. Special Tax Counsel expresses no opinion regarding other federal income tax consequences relating to the accrual or receipt of interest on the Certificates.

See "TAX EXEMPTION" herein.

# \$10,300,000

## CERTIFICATES OF PARTICIPATION

Evidencing Fractional Undivided Interest of the Owners Thereof in Rental Payments of a  
**LEASE PURCHASE AGREEMENT**  
(Detention Facility Acquisition Project)  
to be Made by the  
**COUNTY OF NEWTON, TEXAS**

Dated: June 15, 1990

Due: June 15, as shown below

The Certificates will be initially executed in fully registered form in Denominational Amounts of \$100,000 or any integral multiple thereof. The Interest Components, and Principal Components other than the final Principal Component, on the Certificates are payable semiannually on June 15 and December 15 of each year, with Interest Component payment commencing December 15, 1990, and Principal Component payment commencing December 15, 1991, all such payments to be by check or draft mailed on the Certificate Payment Date for each Certificate to the Owner thereof registered as such as of the "Record Date" or, in certain circumstances, by wire transfer. The final Principal Component evidenced by, and any premium payable with respect to, each Certificate is payable upon surrender thereof at maturity or upon final prepayment at the Dallas, Texas corporate trust office of NCBN Texas National Bank, Trustee. The Certificates are subject to mandatory and optional prepayment prior to maturity as described herein.

The Certificates are being executed and delivered to finance the acquisition, construction and leasing of a 800-bed detention facility (the "Facility"), which the County anticipates it will utilize for the purpose of housing non-high-risk prisoners from jurisdictions other than the County, and to pay the costs incurred in connection with the issuance and sale of the Certificates. The Certificates represent fractional undivided interests in Rental Payments to be made by the County for the use of the Facility pursuant to the terms of a Lease Agreement dated as of June 15, 1990 (the "Lease Agreement") by and between the County and Diversified Municipal Services of Texas, Inc. (the "Corporation").

The payment of the amounts evidenced by the Certificates is subject to various risks. The Certificates are not suitable investments for all investors and are being offered only to sophisticated institutional investors. The future transfer of the Certificates will also be limited to sophisticated investors. Each purchaser of the Certificates and any future transferee will be required to execute and deliver an investment letter in the form attached to this Official Statement as a condition to any such purchase or transfer. See "RISK FACTORS" herein.

**THE OBLIGATION OF THE COUNTY TO MAKE RENTAL PAYMENTS UNDER THE LEASE AGREEMENT DOES NOT CONSTITUTE AN OBLIGATION OF THE COUNTY FOR WHICH THE COUNTY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE COUNTY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE CERTIFICATES NOR THE OBLIGATION OF THE COUNTY TO MAKE RENTAL PAYMENTS UNDER THE LEASE AGREEMENT CONSTITUTES AN INDEBTEDNESS OF THE COUNTY, THE STATE OF TEXAS OR ANY OF THEIR RESPECTIVE POLITICAL SUBDIVISIONS WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF TEXAS OR OTHERWISE.**

The Obligation of the County to make Rental Payments under the Lease Agreement is subject to annual appropriation contingent on monthly Revenue generated by the Facility. The Certificates are not general obligations of the Trustee or the County, but are payable solely from the Revenue generated by the Facility. If, for any reason, the County fails or refuses to appropriate the Rental Payments due under the Lease Agreement in a particular fiscal year, the Lease Agreement will terminate. Following any such termination or upon the occurrence of any Event of Default under the Lease Agreement, the Trustee may sell or lease the Facility and retain the proceeds of such sale or lease for the benefit of the Certificate Owners, and the County will have no further obligation to make Rental Payments due under the Lease Agreement. See "SECURITY AND SOURCES OF PAYMENT - Obligation Subject to Annual Appropriation" herein.

**\$10,300,000 9 8/8% CERTIFICATES OF PARTICIPATION DUE  
DECEMBER 15 AND JUNE 15, 1991 THROUGH 2011 @ 100%**

(plus accrued interest)

The Certificates are offered when, as and if delivered to and received by the Underwriter, subject to the approving opinion of the Attorney General of the State of Texas as to the Lease Agreement and the opinion of Winstead Sechrest & Minick P.C., Dallas, Texas, Special Tax Counsel, as to the tax-exempt status of the Interest Components of the Rental Payments and certain other conditions. Certain legal matters will be passed upon for the Underwriter by its counsel, Steel River Boley Jones & Grey, Portland, Oregon, and for the County by Haley, Davis, Wren, Bristow & Rasner, Waco, Texas, Special Counsel, and for the Trustee by Steven D. Katz A Professional Corporation, Houston, Texas. It is anticipated that the Certificates will be available for delivery in Houston, Texas prior to July 30, 1990.

## PRAGER, MCCARTHY & LEWIS

July 6, 1990

No dealer, broker, salesperson or any other person has been authorized to give any information or make any representations, other than those contained herein, in connection with the offering of the Certificates and, if given or made, such information or representations must not be relied upon. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Certificates by any person in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. The information set forth herein has been obtained from Diversified Municipal Services of Texas, Inc., Texas Detention Management, Inc., Hale-Mills Construction, Inc., the County and other sources which are believed to be reliable but is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Underwriter. The information and expressions of opinion set forth herein are subject to change without notice, and neither the delivery of this Official Statement nor the sale of any of the Certificates implies that there has been no change in the matters described herein since the date hereof. This Official Statement is submitted in connection with the sale of the Certificates and may not be reproduced, used or relied upon, in whole or in part, for any other purpose.

The Underwriter intends to offer the Certificates initially at the offering price set forth on the cover page of this Official Statement, which may subsequently change without any requirement of prior notice. The Underwriter reserves the right to join with dealers and other underwriters in offering the Certificates in a limited public offering to sophisticated investors.

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# **LIMITED PUBLIC OFFERING RISKS OF INVESTING IN CERTIFICATES**

**The Certificates are being offered only to sophisticated institutional investors as defined herein. The Certificates are not suitable for all investors and the payment of the amounts evidenced thereby are subject to a variety of risks as described herein. This Official Statement, including the appendices hereto, should be read in its entirety before any investing in the Certificates.**

## **OFFICIAL STATEMENT**

Relating to

### **\$10,300,000 Certificates of Participation Lease Purchase Agreement (Detention Facility Acquisition Project)**

**Evidencing Fractional Undivided Interest of the  
Owners Thereof in Rental Payments to be Made by the**

## **COUNTY OF NEWTON, TEXAS**

### **INTRODUCTION**

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to provide certain limited information concerning the County of Newton, Texas (the "County") and the sale and delivery of the County of Newton, Texas, Lease Purchase Agreement Certificates of Participation (Detention Facility Acquisition Project) (the "Certificates").

The Certificates evidence fractional undivided interests of the Owners thereof in the Rental Payments (which include Principal Components and Interest Components) to be made by the County in connection with the acquisition, construction and lease of a 300-bed detention facility (the "Facility") pursuant to a Lease Agreement dated as of June 15, 1990 (the "Lease Agreement") by and between Diversified Municipal Services of Texas, Inc. (the "Corporation"), as lessor, and the County, as lessee. Pursuant to the Lease Agreement, the County has the option on or after May 15, 2000 to purchase the Corporation's interest in the Facility, and in the event such option is

exercised the Certificates will be subject to prepayment on the next succeeding June 15 or December 15. *See "THE FACILITY" herein for a description of the County's program to acquire, construct and lease the Facility.*

The County is a political subdivision of the State of Texas located on the eastern border of Texas approximately 120 miles northeast of Houston. For a more complete description of the County and for certain financial information with respect to the County, *see "THE COUNTY" herein.*

The Certificates are being delivered pursuant to a Trust Agreement, dated as of June 15, 1990 (the "Trust Agreement"), by and among NCNB Texas National Bank, as trustee (the "Trustee"), the County and the Corporation. The Trustee and the Corporation will enter into a Lease Assignment Agreement and Option to Purchase dated as of June 15, 1990 (the "Assignment Agreement"), secured by a Deed of Trust, pursuant to which the Corporation will assign its right to receive Rental Payments and all of its right, title and interest in and to the Lease Agreement (except certain rights to indemnification and payment or reimbursement of its costs and expenses under the Lease Agreement) to the Trustee for the benefit of the Certificate Owners, including the right to enforce payment of Rental Payments when due, and will grant to the Trustee an option to purchase the Facility upon nonappropriation or an event of default by the County.

**THE CERTIFICATES ARE BEING OFFERED ONLY TO SOPHISTICATED INSTITUTIONAL INVESTORS AS DEFINED HEREIN. THE CERTIFICATES ARE NOT SUITABLE FOR ALL INVESTORS AND THE PAYMENT OF THE AMOUNTS EVIDENCED THEREBY ARE SUBJECT TO A VARIETY OF RISKS. *See "RISK FACTORS" herein.***

**THE OBLIGATION OF THE COUNTY TO MAKE RENTAL PAYMENTS UNDER THE LEASE AGREEMENT IS SUBJECT TO APPROPRIATION EACH FISCAL YEAR BY THE COUNTY, IN ACCORDANCE WITH LAW, OF SUMS SUFFICIENT TO PAY THE RENTAL PAYMENTS DUE IN SUCH FISCAL YEAR. THE COUNTY CAN NOT APPROPRIATE ANY MONEYS OTHER THAN THE REVENUES GENERATED BY THE FACILITY FOR THE PURPOSE OF MAKING THE RENTAL PAYMENTS DUE UNDER THE LEASE AGREEMENT. FURTHERMORE, THE COUNTY DOES NOT HAVE SUFFICIENT FINANCIAL RESOURCES TO PAY THE RENTAL PAYMENTS DUE UNDER THE LEASE AGREEMENT OTHER THAN THE REVENUES WHICH ARE ANTICIPATED TO BE GENERATED BY THE FACILITY. THEREFORE, SHOULD THE FACILITY FAIL TO GENERATE REVENUES IN AMOUNTS SUFFICIENT TO MAKE THE RENTAL PAYMENTS WHEN DUE AND TO PAY THE COSTS OF OPERATING AND MAINTAINING THE FACILITY, IT IS HIGHLY UNLIKELY THAT THE COUNTY WILL APPROPRIATE MONEYS TO MAKE SUCH RENTAL PAYMENTS.**

**THE CERTIFICATES ARE NOT GENERAL OBLIGATIONS OF THE TRUSTEE OR THE COUNTY, BUT ARE SECURED SOLELY AS PROVIDED HEREIN. THE OBLIGATION OF THE COUNTY TO MAKE RENTAL PAYMENTS UNDER THE LEASE AGREEMENT DOES NOT CONSTITUTE A DEBT OF THE COUNTY OR THE STATE OF TEXAS OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION, AND DOES NOT CONSTITUTE AN OBLIGATION OF THE COUNTY FOR WHICH THE COUNTY OR THE STATE OF TEXAS IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE COUNTY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.**

**TO THE EXTENT THAT FUNDS ARE APPROPRIATED TO MAKE RENTAL PAYMENTS DUE UNDER THE LEASE AGREEMENT, THE COUNTY SHALL EXPEND ON A MONTHLY BASIS SUCH APPROPRIATED FUNDS FOR RENTAL PAYMENTS AS FACILITY REVENUES ARE RECEIVED EACH MONTH. IF, FOR ANY REASON, THE COUNTY FAILS OR REFUSES TO APPROPRIATE THE RENTAL PAYMENTS DUE UNDER THE LEASE**

**AGREEMENT IN A PARTICULAR FISCAL YEAR, THE LEASE AGREEMENT WILL TERMINATE. FOLLOWING ANY SUCH TERMINATION OR UPON THE OCCURRENCE OF AN EVENT OF DEFAULT UNDER THE LEASE AGREEMENT, THE TRUSTEE MAY SELL OR LEASE THE FACILITY AND RETAIN THE PROCEEDS OF SUCH SALE OR LEASE FOR THE BENEFIT OF THE CERTIFICATE OWNERS TO THE EXTENT OF THE AMOUNTS OWING TO THE CERTIFICATE OWNERS, AND THE COUNTY WILL HAVE NO FURTHER OBLIGATION TO MAKE RENTAL PAYMENTS DUE UNDER THE LEASE AGREEMENT (OTHER THAN THE OBLIGATION TO PAY THOSE RENTAL PAYMENTS DUE UNDER THE LEASE AGREEMENT FOR WHICH SUFFICIENT FUNDS HAVE BEEN PREVIOUSLY APPROPRIATED BY THE COUNTY). See "SECURITY AND SOURCES OF PAYMENT - Obligation Subject to Annual Appropriation." THE TRUSTEE SHALL HAVE NO RIGHT TO ACCELERATE THE DUE DATE OF ANY RENTAL PAYMENT FOLLOWING THE OCCURRENCE OF AN EVENT OF DEFAULT UNDER THE LEASE AGREEMENT, EXCEPT FOR RENTAL PAYMENTS DUE IN THE COUNTY'S CURRENT FISCAL YEAR FOR WHICH AN APPROPRIATION HAS BEEN MADE.**

The summaries or references to the Trust Agreement, the Lease Agreement, the Management Agreement, the Assignment Agreement and other documents, agreements and statutes referred to herein, and the description of the Certificates, the Corporation, the Management Company and the Construction Company included in this Official Statement, do not purport to be comprehensive or definitive, and such summaries, references and descriptions are qualified in their entirety by reference to each such document or statute and to such additional information as prospective purchasers of the Certificates may discover by independent investigation. All capitalized terms used in this Official Statement (unless otherwise defined herein) which are defined in the Trust Agreement, the Lease Agreement or the Management Agreement shall have the same meanings assigned to such terms as set forth therein. The Trust Agreement and Lease Agreement are included in as Appendices B and C hereto.

## **RISK FACTORS**

**In making a decision to purchase any Certificates, the following factors, among others, should be considered:**

**Limited Offering to Sophisticated Institutional Investors.** The Certificates are not suitable investments for all investors. The Certificates will be offered solely to sophisticated institutional investors. A sophisticated institutional investor is one which has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, and is capable of protecting its own interests. A potential institutional investor will be considered sophisticated if it is an "accredited investor" pursuant to Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission in accordance with the Securities Act of 1933, as amended, and is able to bear the economic risk of the investment represented by its purchase of the Certificates, including the risk that the facility financed out of the proceeds of the Certificates may not generate sufficient revenues to enable the County to pay the amounts evidenced by the Certificates.

**Restrictions on Future Transfer of Certificates.** The future transfer of Certificates will also be limited to sophisticated institutional investors. The Underwriter does not intend to maintain a secondary market for these certificates. Any investor who purchases a Certificate should expect to hold the Certificate for the full term. Each purchaser of the Certificates and any future transferee will be required to execute and deliver an Investment Letter in the form attached to this Official Statement and the Trust Agreement as a condition to any such purchase or transfer.

**Limited Recourse.** The Certificates will be payable solely from the revenues generated by the Facility. General Fund moneys cannot be appropriated for Rental Payments under Texas law, nor would they be sufficient to pay Rental Payments in light of the County's other obligations. See "THE COUNTY - Selected County Financial Information."

**Annual Appropriation Obligation.** The obligation of the County to make Rental Payments under the Lease Agreement is subject to annual appropriation contingent on monthly revenues generated by the Facility. It is anticipated that the County will only appropriate funds to the extent revenues are generated by operation of the Facility each month. If, for any reason, the County fails or refuses to appropriate the Rental Payments due under the Lease Agreement in a particular fiscal year, the Lease Agreement will terminate and the Trustee may sell or lease the Facility and retain the proceeds of such sale or lease for the benefit of the Certificate Owners but only to the extent of the amounts owing to the Certificate Owners, and the County will have no further obligation to make Rental Payments due under the Lease Agreement (other than the obligation to pay those Rental Payments due under the Lease Agreement for which sufficient funds have been previously appropriated by the County). Any proceeds remaining after such termination, sale or lease and payment of the amounts owing to the Certificate Owners shall be paid to and be the property of the County. The obligation of the County to make Rental Payments under the Lease Agreement does not constitute a debt of the County or any of its political subdivisions and does not constitute an indebtedness of the State of Texas or any of its political subdivisions within the meaning of any constitutional or statutory debt limitations or restrictions.

In the event the County fails to duly appropriate the Rental Payments due under the Lease Agreement in any particular fiscal year, there can be no assurance that, following termination of the Lease Agreement, the resale value or the revenues generated by any leasing of the Facility will be sufficient to pay all unpaid Rental Payments evidenced by the Certificates. **The Trustee may not be legally authorized to operate the Facility as a detention facility without the approval and involvement of the County Sheriff, which approval and involvement, in the event of a termination due to the County's failure to appropriate, may be impossible to secure.**

Furthermore, any termination of the Lease Agreement or leasing of the Facility by the Trustee (whether such termination or leasing results follow termination of the Lease Agreement due to non-appropriation of Rental Payments or the occurrence of an Event of Default) may have the result of causing the Interest Components of the Rental Payments evidenced by the Certificates to become subject to federal income taxes. The Owners of the Certificates shall have no recourse against the County, and the County shall have no liability to the Owners, for any loss or damage resulting from or any penalties or additional taxes owing in the event the Interest Components of the Rental Payments evidenced by the Certificates become subject to federal income taxes as a result of any termination of the Lease Agreement or leasing of the Facility resulting from the failure of the County to appropriate the Rental Payments.

**THE COUNTY DOES NOT INTEND TO APPROPRIATE ANY MONEYS OTHER THAN THE REVENUES GENERATED BY THE FACILITY FOR THE PURPOSE OF MAKING THE RENTAL PAYMENTS DUE UNDER THE LEASE AGREEMENT. FURTHERMORE, THE COUNTY DOES NOT HAVE SUFFICIENT FINANCIAL RESOURCES TO PAY THE RENTAL PAYMENTS DUE UNDER THE LEASE AGREEMENT OTHER THAN THE REVENUES WHICH ARE ANTICIPATED TO BE GENERATED BY THE FACILITY. THEREFORE, SHOULD THE FACILITY FAIL TO GENERATE REVENUES IN AMOUNTS SUFFICIENT TO MAKE THE RENTAL PAYMENTS WHEN DUE AND TO PAY THE COSTS OF OPERATING AND MAINTAINING THE FACILITY, IT IS HIGHLY UNLIKELY THAT THE COUNTY WILL APPROPRIATE MONEYS TO MAKE SUCH RENTAL PAYMENTS.**

*For additional consequences of the failure of the County to appropriate funds sufficient to pay the Rental Payments when due, see "SECURITY AND SOURCES OF PAYMENT - Obligation Subject to Annual Appropriation."*

**No Acceleration.** Upon the occurrence of an Event of Default by the County under the Lease Agreement or in the event the County fails or refuses to appropriate the Rental Payments due in any fiscal year, the Trustee will have no right to accelerate the due date of the remaining Rental Payments, except for Rental Payments due in the County's current fiscal year for which an appropriation has been made.

**Ability of Facility to Generate Revenues.** The Facility's ability to produce revenue is dependent upon an adequate supply of prisoners from sources other than the County, which supply is dependent on the County's ability to secure non-County prisoners through contracts with prisoner transfer sources. *See "THE FACILITY - Anticipated Uses of the Facility."* **As of the date of issue of the Certificates, the County has not entered into any contracts with any prisoner transfer sources which would obligate any prisoner transfer source to lease all or any beds in the Facility.** The County has received a number of non-binding and legally unenforceable written expressions of interest in the use of the Facility from various governmental units, including the District of Columbia (the "District"). There can be no assurance that any such governmental unit or the District will ever enter into any arrangement with the County for use of the Facility or if such an arrangement is entered into what the terms and conditions will be. *See "THE FACILITY - Anticipated Uses of the Facility - District of Columbia."* **In any event, should the County and another governmental unit enter into a binding agreement for the lease of beds in the Facility, it will be a short-term contract not extending to the full term of the Lease Agreement.**

**The need for prison facilities of the sort envisioned by the Facility is dependent upon a variety of other circumstances not under the control of either the County or the Management Company, including but not limited to any increase or decline in the rates of criminal convictions requiring detention in a prison facility, construction by other jurisdictions of privately operated or government prison facilities, and the cost for each jurisdiction of housing its own prisoners. *See "REVENUE PROJECTIONS."***

**Jail Commission Certification.** Under the provisions of the statute which authorizes the County to contract with the Management Company for the operation of the Facility, and under the terms of the management contract, the Management Company is required to operate the Facility in compliance with the minimum standards adopted by the Texas Commission on Jail Standards (the "Commission") and to receive and retain certification of compliance from the Commission. The Commission has the authority to enforce its standards by ordering that a detention facility in violation of these standards be closed, subject to an administrative hearing. The County has received the necessary approval from the Commission for the design and development phase of the Facility, and is currently submitting completed construction documents for review and approval by the Commission. *See "JAIL COMMISSION APPROVAL PROCESS."*

**Upon completion, the Facility must be certified by the Commission for the incarceration of inmates that are not high-risk inmates.** The Commission, in its rules and regulations, defines "high-risk inmates" as those persons who cannot be allowed to mingle physically with other inmates without direct supervision, normally because of assaultive and aggressive behavior or high escape risk. **There is no assurance that the Facility will obtain such certification and retain it throughout the period of the Lease Agreement. Failure to obtain and/or retain such certification will prevent the Facility from generating revenues. *See "THE FACILITY - Zavala County."***

## THE FACILITY

The County has no experience is designing, permitting, constructing or operating a detention facility such as the Facility. Therefore, the County is entirely dependent upon the Corporation, the Management Company and the Construction Company for the successful design, permitting, construction and operation of the Facility.

**The Facility.** The Facility consists of 35 acres of land for the site and construction of a detention facility to house non high-risk prisoners sentenced from prisoner transfer sources, including Newton, Beaumont, Houston, the State of Texas and other cities and states. The 35-acre site has been selected and approved by the County.

The Facility will be of tilt-up concrete single-story panels with a capacity for 300 prisoners. The total area is to be about 49,000 square feet, including a sally port. The interior is to be centrally heated and air-conditioned and equipped with a smoke evacuation system. The interior configuration comprises a central core with the majority of the housing in dormitories, exercise rooms and a central guard control. Several holding cells, offices and general support areas will be situated on either side of the aforementioned core. The roof structure and frame will be composed of pre-engineered steel construction with eave heights of 12 feet.

Site improvements will include adequate concrete paved parking and vehicle access, security fence around the perimeter and exterior lighting. The Facility will be connected to the Newton water and sewage disposal system.

The County has resolved to implement a subsequent 144-bed expansion to the Facility. Such an expansion, if and when undertaken by the County, will be financed independently of the Certificates.

The budgeted costs of the Facility are set forth in the following table.

### Budgeted Facility Costs

Item:	Budgeted Amount:
Facility Construction . . . . .	\$ 7,043,000.00
Site Acquisition:	
Land Costs . . . . .	67,000.00
Title Policy . . . . .	3,500.00
Environmental Impact/Soils Reports . . . . .	15,000.00
Architects/Engineers . . . . .	490,000.00
Project Contingency . . . . .	125,000.00
Furniture, Fixtures & Equipment . . . . .	<u>200,000.00</u>
<b>Total . . . . .</b>	<b>\$ 7,943,500.00</b>

**The Corporation.** Under the Lease Agreement, the County has contracted with Diversified Municipal Services of Texas, Inc. (the "Corporation") to provide the County with the Facility on a "turn-key" basis. Information concerning the Corporation, its operations, experience and affiliates should be obtained directly by prospective investors from Joe Vaughn, Diversified Municipal Services of Texas, Inc., 132 Ulen Boulevard, Lebanon, Indiana 46052, telephone number (317) 482-3430.

The Corporation is a Texas corporation organized solely for the purpose of participating in lease purchase financings in the State of Texas. DMS has participated in three previous projects, in Zavala, LaSalle and Maverick



Counties, each of which involved detention facilities. Joe Vaughn is owner, with Brenda Vaughn, and president of DMS. The information contained in this Official Statement regarding the estimated expenses associated with the Facility and the estimated revenue to be generated by the Facility was prepared and provided by Joe Vaughn for inclusion herein.

**Design and Construction.** The County will contract with Texas Detention Management, Inc. (the "Management Company") to provide the design for the Facility. The design contract calls for the Management Company to be paid a fixed fee of \$490,000 for services rendered in the design of the Facility and certain limited oversight of the construction of the Facility. The compensation under the design contract is payable in installments, with 85% of the compensation being paid upon the delivery of the Certificates and 15% being paid during the construction phase of the work under the design contract. The Management Company is affiliated with the Construction Company; *see discussion under "THE FACILITY - The Management Company" below.*

With the County's approval, the Corporation will contract with Hale-Mills Construction, Inc. (the "Construction Company") for the construction of the Facility. The construction contract calls for the construction of the Facility for a price of \$7,043,000. The Construction Contract will require the Construction Company to provide a performance and payment bond in an amount sufficient to cover the construction cost of the Facility. The Construction Company is affiliated with the Management Company; *see discussion under "THE FACILITY - The Management Company" below.* The Construction Company has been in business for 20 years and has constructed more than one-half billion dollars in projects, including four detention facilities similar to the Facility. Additional information concerning the Construction Company, its operations, experience and affiliates should be obtained directly by prospective investors from Phil Packer, Hale-Mill Construction, Inc., Suite 230, 4120 Southwest Freeway, Houston, Texas 77027, telephone number: (713) 622-2300.

Schematic drawings have been approved by the Jail Commission. Before construction commences, the Commission will review the construction plans for "design certification," which will certify that the Facility meets all State specifications and requirements. Certification will be continually reviewed upon completion of the Facility and during its use as a detention facility. *See "Jail Commission Approval Process."*

**The Management Company.** The County intends to employ the firm of Texas Detention Management, Inc. (the "Management Company") to operate the Facility. The management agreement to be entered into between the Management Company and the County is structured to meet the requirements of the Internal Revenue Code of 1986. The Management Company is affiliated with the Construction Company and will design the Facility pursuant to a design contract to be entered into with the County as discussed above. The Management Company was formed in 1989 to provide management services to governmental agencies for detention facilities such as the Facility.

**The Management Company and its owners and personnel have no extensive experience in managing detention centers such as the Facility. The experience of the owners of the Management Company in this regard is limited to an affiliate's management of a detention center in Zavala County, Texas; *see "Zavala County" below.***

Set forth below is a chart representing the officers and directors of the Management Company, followed by a brief description of its key employees:

## OFFICERS

Jerry C. Cook	President
J. Dan White	Vice President/Facilities Development
P. K. Packer	Vice President/Administration
P. K. Packer	Secretary
P. K. Packer	Treasurer

## BOARD OF DIRECTORS

Jerry C. Cook	Chairman of the Board
J. Dan White	Officer
P. K. Packer	Officer
G. W. Rockwell	Board Member

Jerry C. Cook is president, owner and CEO of the Management Company, which was founded in 1989 to provide design and management services to governmental agencies for their leased detention facilities. Mr. Cook is also president, owner and CEO of Detention Services, Inc. ("DSI"), an affiliate of the Management Company, which is a design/build management company specializing in prison and detention facilities. Additionally, Mr. Cook is president, owner and CEO of the Construction Company, and has a background in construction sales and management since 1966.

L. B. Gamble, Jr. is director of operations for the Management Company, with responsibility for all operations, training and security of its detention facilities. Mr. Gamble is also assistant administrator and administrator for Detention Services, Inc. of Ron Carr Detention Center in Crystal City, Texas. Mr. Gamble has a background in law enforcement since 1967.

P. K. Packer is controller and chief financial officer of the Management Company. Mr. Packer serves in the same capacity in Detention Services, Inc. and the Construction Company.

J. Dan White is vice president for facilities development with the Management Company. Mr. White is also senior vice president and construction manager of the Construction Company, and has a background in construction management since 1952.

**Zavala County.** DSI, an affiliate of the Management Company, is currently managing one other detention center built by the Construction Company. The Ron Carr Detention Center (the "Zavala Detention Center") in Zavala County, Texas has been operating for approximately one year and has been operating at capacity with prisoners from the District. The Zavala Detention Center is utilized by the District pursuant to an intergovernmental agreement between the District and Zavala County. The District of Columbia is using the Zavala Detention Center to house "low-risk" prisoners with at least one full year of their sentences to complete.

**Recently the Jail Commission questioned the certification of the Zavala Detention Center, in particular the designation of some of its inmates as "low-risk." Pursuant to a Consent Order dated June 6, 1990, the Zavala Detention Center has transferred several inmates and revised its inmate classification plan. Should the Facility have its certification questioned in a manner similar to that of the Detention Center, it could result in the interruption or termination of any then-current agreements with prisoner transfer sources. Such interruption or termination would have an adverse impact upon the revenues generated by the Facility. See "RISK FACTORS - Jail Commission Certification."**

**Anticipated Uses of the Facility.** Currently, the number of available non-high-risk prisoners from the surrounding areas of Newton, Beaumont and Houston, Texas is less than the 300-prisoner capacity of the Facility. The County intends to contract with other jurisdictions to house prisoners on a per diem basis. Under the Agreement, the County may not detain or accept for incarceration in the Facility any prisoners other than:

(i) those detained or incarcerated by the County or the State of Texas or political subdivisions of the State of Texas; and

(ii) federal prisoners who are awaiting transfer to other facilities or other disposition under applicable federal law;

(iii) and other prisoners to the extent permitted by the laws of the State of Texas as defined in and supported by an opinion of qualified counsel requested and received by the County.

**The failure to secure an adequate supply of prisoners from other jurisdictions will result in the Facility failing to generate revenues sufficient to make the Rental Payments evidenced by the Certificates.**

**The County.** The County currently has an average backlog of 389 cases pending trial, and approximately 550 unserved warrants. It operates a 28-bed facility which is generally at capacity. The Commission has allocated no bed space for prisoners from the County for 1990.

**Texas.** The County has received support for the Facility from neighboring counties in Texas. However, no other jurisdiction in Texas has committed to use the Facility to house its prisoners. The Facility may be used to address needs including overcrowding in local jails, unserved warrants, and loss of certification of jail space.

**District of Columbia.** The Management Company has received a letter of interest from the Department of Corrections of the District of Columbia (the "District") stating its need to lease bed space for its prisoners. The District has committed to removing inmates from federal prisons and placing them in alternate facilities that meet the District's requirements. It is anticipated that the District will have a continuing need to house prisoners in leased facilities.

**The letter from the District does not constitute a binding obligation on the part of the District to lease all or any beds of the Facility for its prisoners. The District cannot enter a binding agreement for the transfer of prisoners without following its established procurement procedures, which require the inspection by federal Department of Justice employees of the completed Facility. Furthermore, under the Agreement, the County could not accept any prisoners from the District without first receiving an opinion of legal counsel to the effect that such prisoners are permitted under Texas law to be incarcerated in the Facility. In the case of prisoners from the District, such opinion of legal counsel would have to be to the effect that such prisoners are federal prisoners within the meaning of Texas law**

**TO DATE THE COUNTY HAS NOT ENTERED INTO ANY CONTRACTS WITH ANY PRISONER TRANSFER SOURCES FOR THE LEASE OF ALL OR ANY BEDS OF THE FACILITY. WHILE THERE APPEARS TO BE A NEED FOR THE SERVICES OFFERED BY THE FACILITY, NEITHER THE MANAGEMENT COMPANY NOR THE COUNTY WARRANTS OR REPRESENTS IN ANY WAY THAT CONTRACTS WITH ANY PRISONER TRANSFER SOURCES WILL BE FORTHCOMING. THE FAILURE TO SECURE AN ADEQUATE SUPPLY OF PRISONERS FROM OTHER JURISDICTIONS WILL RESULT IN**

THE FACILITY FAILING TO GENERATE REVENUES SUFFICIENT TO MAKE THE RENTAL PAYMENTS EVIDENCED BY THE CERTIFICATES. See "RISK FACTORS".

## REVENUE PROJECTIONS

THE EXPENSES AND ANNUAL INCOME PROJECTIONS STATED BELOW HAVE BEEN PREPARED BY THE CORPORATION, AND ARE BASED ON ACTUAL OPERATING EXPENSES INCURRED IN THE OPERATION OF THE ZAVALA DETENTION CENTER IN ZAVALA COUNTY, TEXAS, BY DSI, AN AFFILIATE OF THE MANAGEMENT COMPANY. THEY HAVE BEEN ADJUSTED TO REFLECT THE DIFFERENTIAL IN SIZE FROM 226 PRISONER BEDS (THE SIZE OF THE ZAVALA DETENTION CENTER) TO 300 PRISONER BEDS (THE PROPOSED SIZE OF THE FACILITY). IN DEVELOPING THE SALARY AND EXPENSE COSTS, AN ADJUSTMENT OF 4% WAS UTILIZED FROM THE EXTRAPOLATED FIGURES TO ALLOW FOR THE ANNUAL ADJUSTMENTS CAUSED BY THE DELAY OF ONE YEAR IN OPENING THE COUNTY FACILITY.

THERE CAN BE NO ASSURANCE THAT THE OPERATING EXPENSES OR THE REVENUES GENERATED BY THE FACILITY WILL BE AS SET FORTH IN THE FOLLOWING PROJECTIONS. THESE ARE PROJECTIONS AND ESTIMATES ONLY, AND WHILE THEY ARE PREPARED BY THE CORPORATION IN GOOD FAITH THERE IS NO ASSURANCE THAT THE FACILITY WILL REALIZE ACTUAL REVENUES RESEMBLING THESE PROJECTIONS AND ESTIMATES.

### Utilities:

Electric	\$ 50,000
Gas	22,000
Water/Sewer	<u>24,000</u>
Total:	\$ 96,000

### Operational Overhead:

Legal and Accounting	\$ 15,000
Staff Travel/meetings	12,000
Prisoner Transfer	18,000
Linen & Laundry (replace)	12,000
Housekeeping Supplies	20,000
Maintenance Expense	10,000
Trash & Exterminating	10,250
First Aid/safety (replace)	4,000
Clothes (replacement)	23,000
Permits & Licenses	8,000
Hygiene items (inmates)	5,000
Miscellaneous	<u>5,000</u>
Total:	\$142,250

Food Costs: \$375,800

**Office Overhead \*:**

Office Supplies	\$ 7,000
Printing & Advertising	5,000
Dues, Subscriptions	8,000
Postage	<u>5,000</u>
	<u>\$ 25,000</u>

\* In computing the office overhead and comparing it to the previously submitted worksheet, it was found that clerical help was improperly carried in this category, rather than in the salary and personnel expenses. In addition, some other costs were not properly computed and the following represents the necessary adjustments in this category:

**Education/Work Programs \*\*** \$197,300

\*\* This represents the specific costs of providing certain G.E.D., vocational, and college preparatory courses to those inmates being held for the District. These items are normally billed separately in other operations, but the District includes the cost in the per diem payment:

**Medical/Dental - Inmates\*\*\*** \$ 46,200

\*\*\* These are maximum payments as defined in the operations of the Facility. Should there be additional costs above this level, a direct billing would be made to the organization providing the convicted offender. Occasionally, some form of emergency care or hospitalization is required and such items represent additional costs to the prisoner transfer sources. Prisoners with AIDS, communicable diseases, heart problems, or terminal illnesses are returned for care to the host organization and the costs of such transfer are borne by the host:

**Insurance/Taxes:**

Building Insurance	\$ 65,000
Liability Insurance	45,000
Taxes (personal prop. & sales)	<u>54,500</u>
Total	<u>\$164,500</u>

**Testing and Training \*\*\*\*** \$142,000

\*\*\*\* These are also costs that are included in the gross per diem rate by the District and are not usually required in the normal operations of this type of facility. When the offender is sent from the host agency, the testing and limited training is provided prior to transfer to the detention facility:

**Salaries & Benefits \*\*\*\*\*** \$1,340,625

\*\*\*\*\* These wages represent the scales in the Newton area, which are slightly higher than in Zavala County. They have also been adjusted to reflect payrolls beginning in 1991.

**TOTAL ESTIMATED ANNUAL EXPENSES:** **\$2,529,675**

**STAFFING CHART**  
(First Year's Estimate)

**Administration**

Director	\$ 40,000
Assistant Director/Training	30,000
Secretary	18,000
Chief of Security	25,000

**Business Office**

Accountant	25,000
Bookkeeper	18,000
Warehouse Clerk	18,000
2 Clerk Typists @ \$15,000	30,000

**Classification & Treatment**

3 Counselors @ \$20,000	60,000
Registered Nurse	24,000
Recreation Specialist	20,000
Clerk Typist	15,000

**Services**

Food Service Supervisor/Cook	25,000
1 cook @ \$16,500	16,500
Maintenance Supervisor	20,000

**Custody**

5 Shift Supervisors @ \$20,000	100,000
5 Central Control @ \$18,000	90,000

**Security Posts**

32 @ \$16,500	<u>528,000</u>
<b>Subtotal - salaries and wages</b>	<b>\$1,102,500</b>
<b>Benefits (25%)</b>	<b><u>238,125</u></b>

**TOTAL ANNUAL PERSONNEL COSTS      \$1,340,625**

# NEWTON COUNTY DETENTION CENTER 300-BED MEDIUM/MINIMUM SECURITY FACILITY\*

(All figures in table are expressed in dollars)

MAXIMUM PRISONER DAYS: 109,500  
 PROBABLE OPERATING LEVEL: 95%  
 ESTIMATED ANNUAL INFLATION: 4%  
 CERTIFICATE INTEREST ASSUMPTION: 9.375%

[ESTIMATE ONLY]

DESCRIPTION	FISCAL 1991	FISCAL 1992	FISCAL 1993	FISCAL 1994	FISCAL 1995	FISCAL 1996	FISCAL 1997	FISCAL 1998	FISCAL 1999	FISCAL 2000	FISCAL 2001
PROJECTED PER DIEM ANNUAL INCOME @ 95%	46.50 4,837,163	48.36 5,030,649	50.29 5,231,875	52.31 5,441,150	54.40 5,658,796	56.57 5,885,148	58.84 6,120,554	61.19 6,365,376	63.64 6,619,991	66.18 6,884,791	68.83 7,160,182
<b>ESTIMATED EXPENSES</b>											
UTILITIES	96,000	99,840	103,834	107,987	112,306	116,799	121,471	126,329	131,383	136,638	142,103
OPERATIONAL OVERHEAD	142,250	147,940	153,858	160,012	166,412	173,069	179,992	187,191	194,679	202,466	210,565
FOOD COSTS	375,800	390,832	406,465	422,724	439,633	457,218	475,507	494,827	514,308	534,881	556,276
OFFICE OVERHEAD	25,000	26,000	27,040	28,122	29,246	30,416	31,633	32,898	34,214	35,583	37,006
EDUCATION/WORK PROGRAMS	197,300	205,192	213,400	221,936	230,813	240,046	249,647	259,633	270,019	280,819	292,052
MEDICAL/DENTAL											
- INMATES	46,200	48,048	49,970	51,969	54,047	56,209	58,458	60,796	63,228	65,757	68,387
INSURANCE/TAXES	164,500	171,080	177,923	185,040	192,442	200,139	208,145	216,471	225,130	234,135	243,500
TESTING AND TRAINING	142,000	147,680	153,587	159,731	166,120	172,765	179,675	186,862	194,337	202,110	210,195
SALARIES & BENEFITS	1,340,625	1,394,250	1,450,020	1,508,021	1,568,342	1,631,075	1,696,318	1,764,171	1,834,738	1,908,127	1,984,452
ACTUAL LEASE PAYMENT	1,160,935	1,142,187	1,123,437	1,104,687	1,085,937	1,116,717	1,123,475	1,178,125	1,140,625	1,103,125	1,165,625
<b>TOTAL EXPENSES</b>	<b>3,690,610</b>	<b>3,773,049</b>	<b>3,859,533</b>	<b>3,950,227</b>	<b>4,045,299</b>	<b>4,244,923</b>	<b>4,435,221</b>	<b>4,507,005</b>	<b>4,602,6605</b>	<b>4,703,641</b>	<b>4,910,162</b>
<b>NET INCOME AVAILABLE FOR MANAGEMENT FEE AND DISTRIBUTION TO COUNTY AS PROFITS</b>											
<b>NET INCOME</b>	<b>1,146,553</b>	<b>1,257,600</b>	<b>1,372,341</b>	<b>1,490,923</b>	<b>1,613,497</b>	<b>1,640,224</b>	<b>1,685,333</b>	<b>1,858,371</b>	<b>2,017,331</b>	<b>2,181,149</b>	<b>2,250,020</b>

\*Prepared by the Corporation

DESCRIPTION	FISCAL 2002	FISCAL 2003	FISCAL 2004	FISCAL 2005	FISCAL 2006	FISCAL 2007	FISCAL 2008	FISCAL 2009	FISCAL 2010	FISCAL 2011	FISCAL 2012
PROJECTED PER DIEM ANNUAL INCOME @ 95%	71.58 7,446,589	74.45 7,744,453	77.43 8,054,231	80.52 8,376,400	83.74 8,711,456	87.09 9,059,915	90.58 9,422,311	94.20 9,799,204	97.97 10,191,172	101.89 10,598,819	105.96 11,022,771
ESTIMATED EXPENSES											
UTILITIES	147,788	153,699	159,847	166,241	172,891	179,806	186,998	194,478	202,258	210,348	218,762
OPERATIONAL OVERHEAD	218,987	227,747	236,857	246,331	256,184	266,432	277,089	288,172	299,699	311,687	324,155
FOOD COSTS	578,527	601,668	625,735	650,764	676,795	703,866	732,021	761,302	791,754	823,424	856,361
OFFICE OVERHEAD	38,486	40,026	41,627	43,292	45,024	46,825	48,698	50,645	52,671	54,778	56,969
EDUCATION/WORK PROGRAMS	303,734	315,884	328,519	341,660	355,326	369,539	384,321	399,694	415,681	432,309	449,601
MEDICAL/DENTAL - INMATES	71,123	73,968	76,926	80,003	83,204	86,532	89,983	93,593	97,336	101,230	105,279
INSURANCE/TAXES	253,240	263,370	273,905	284,861	296,255	308,105	320,430	333,247	346,577	360,440	374,857
TESTING AND TRAINING	218,602	227,347	236,440	245,898	255,734	265,963	276,602	287,666	299,173	311,139	323,585
SALARIES & BENEFITS	2,063,831	2,146,384	2,232,239	2,321,529	2,414,390	2,510,965	2,611,404	2,715,860	2,824,495	2,937,474	3,054,973
ACTUAL LEASE PAYMENT	1,214,062	1,159,812	1,101,562	1,145,412	1,175,000	1,100,600	1,220,312	1,126,562	628,125	0	0
TOTAL EXPENSES	5,108,380	5,209,903	5,313,657	5,525,991	5,730,802	5,838,634	6,147,867	6,251,219	5,957,769	5,542,829	5,764,543

NET INCOME AVAILABLE FOR  
MANAGEMENT FEE AND  
DISTRIBUTION TO COUNTY  
AS PROFITS

NET INCOME 2,338,209 2,534,550 2,740,574 2,850,410 3,221,281 3,274,444 3,547,984 4,233,403 5,055,989 5,258,229



**Newton County, Texas  
Detention Facility  
Application of Project Revenues\*  
[ESTIMATE ONLY]**

	1991	1992	1993	1994	1995
Projected Annual Revenues (1) . . . . .	4,837,163	5,030,649	5,231,875	5,441,150	5,658,796
<b>Priority of Application of Projected Annual Revenues:</b>					
<b>First: Payment of Certificates</b>					
Debt Service (2) . . . . .	1,160,935	1,142,187	1,123,437	1,104,687	1,085,937
<b>Second: Payment of Amounts</b>					
Other than Debt Service					
Due under Lease or					
Trust Agreement (3) . . . . .	0	0	0	0	0
<b>Third: Past Due Fixed Monthly</b>					
Fee and Reimbursable					
Expenses to Manager (4) . . . . .	0	0	0	0	0
<b>Fourth: Past Due Fixed</b>					
Amount to County (5) . . . . .	0	0	0	0	0
<b>Fifth: Fixed Monthly Fee and</b>					
Reimbursable Expenses					
To Manager (6) . . . . .	2,482,500	2,482,500	2,482,500	2,482,500	2,482,500
<b>Sixth: The Fixed Monthly</b>					
Amount to County (7) . . . . .	130,031	272,546	272,546	272,546	272,546
<b>Seventh: The Gross Revenue</b>					
Fee to Manager (8) . . . . .	957,327	1,020,075	1,218,053	1,423,276	1,636,032
<b>Eighth: Balance Remaining</b>					
to County (9) . . . . .	106,370	113,342	135,339	158,142	181,781

\*Prepared by the Corporation. This table does not extend beyond the maximum 5-year term of the first Management Agreement, due to the inability to meaningfully estimate the negotiated application of Project Revenues beyond that point.

- (1) The first \$106,000 of Project Revenues received each month are required to be deposited in the Revenue Account established under the Trust Agreement.
- (2) Applied to make the Rental payments under the Lease which are evidenced by the Certificates. Reflects average lease payment based on \$10,300,000 at 9 3/8% rate.
- (3) As provided in Section 4.07(d)(ii) of the Trust Agreement. These payments relate to the Trustee's fees under the Trust Agreement. They are shown at \$0 because the intent is to pay these fees out of investment earnings on moneys held under the Trust Agreement.
- (4) As provided in Section 4.03(b)(i) and (ii) of the Management Agreement. For purposes of these projections, it is assumed that Project Revenues will be sufficient to make all payments when due and that therefore there will be no past due payments. Thus, this item is shown as \$0. However, there can be no assurance that Project Revenues will, in fact, be sufficient to make all payments when due and thus it is possible that there may be past due payments.
- (5) As provided in Section 4.03(b)(iii) of the Management Agreement. For purposes of these projections, it is assumed that Project Revenues will be sufficient to make all payments when due and that therefore there will be no past due payments. Thus, this item is shown as \$0. However, there can be no assurance that Project Revenues will, in fact, be sufficient to make all payments when due and thus it is possible that there may be past due payments.
- (6) As provided in Section 4.03(b)(i) and (ii) of the Management Agreement.
- (7) As provided in Section 4.03(b)(iii) of the Management Agreement. Fee to County is \$1.25 per diem per prisoner for 1st year and increases to \$2.62 for subsequent years with County paying insurance and any taxes levied.
- (8) As provided in Section 4.03(b)(iv) of the Management Agreement.
- (9) As provided in Section 4.03(b)(v) of the Management Agreement.

## JAIL COMMISSION APPROVAL PROCESS

The following summarizes the process any Texas detention facility, including the Facility, must undergo in order to receive certification by the Commission. **Without such certification by the Jail Commission, the Facility cannot be operated as a detention facility and thus will be unable to produce the revenues necessary to pay the principal and interest evidenced by the Certificates.** For more specific information relating to the Facility and the status of its request for certification by the Jail Commission, see "**RISK FACTORS - Jail Commission Certification.**"

**Initial Contact.** When the construction, expansion or remodeling of a detention facility is being considered, the owner and the sheriff must notify the Executive Director of the Commission and provide the Executive Director with an analysis of need and requirements of the project for review and opinion of concepts.

**Appointment of Architect.** All construction or remodeling of facilities must be carried out under the terms of an agreement in a form approved by the American Institute of Architects, or other mutually agreeable contract entered into between the owner and an architect or engineer licensed to practice in the State of Texas.

**Information Submissions.** Complete submittals of all information, including an analysis of projected construction costs and costs of operation prepared by the architect under the direction of the sheriff, must be made to the Executive Director on completion of the schematic design phase, on completion of the design development stage, and on completion of all construction documents including drawings and specifications setting forth in detail requirements for the construction of the entire project, including necessary bidding information and bidding forms and final cost estimates of construction and operation cost.

**Official Comments.** Each time a submission is made, as required above, notification must be given directly to the Executive Director by the sheriff and owner that they have reviewed the information furnished. In the event any element of the information submitted is objected to or disapproved by the sheriff or any of the members of the Commissioners' Court, and if the sheriff or any member of the Commissioners' Court desires for their position to be known to the Executive Director, written notification of their objection and reasons therefor must be given to the Executive Director by the commissioner or sheriff at the time information is submitted.

**Approval.** Within 30 days of receiving the contract documents as submitted by the owner, the Executive Director will respond in writing with approval or disapproval of the building as complying with the minimum standards established by rules and procedures of the Commission. If approval is not given, an explicit description of the items which are not approved will be given by the Executive Director along with an explicit description of the remedy or remedies necessary. The Executive Director will send his reply directly to the owner, sheriff and architect.

**Addendums, Substitutions and Changes.** Copies of all proposed addendums prepared during the bidding phase must be forwarded to the Executive Director prior to being issued. The Executive Director will respond in writing to the architect, not longer than 7 days after receiving such a request. Modifications, changes and all substitutions of material or equipment for those specified in the approved contract documents must receive written approval by the Executive Director prior to the change order or substitution approval being issued. Emergency approval of addendums, modifications, substitutions or changes may be sought and obtained by telephone or telegraph from the Executive Director who will subsequently issue a confirming answer in writing.

**Inspections.** Final inspection of the completed Facility to determine compliance with approved contract documents and Jail Standards will be made before acceptance by the owner, by a team including the Executive Director or his designated representative, the architect, a representative of the Commissioners' Court, the sheriff and the county officer or employee responsible for construction.

**Comment on Compliance.** Within 10 calendar days after the final inspection, the Executive Director will notify the owner whether or not the facility has met the standards and of any granted variances. The guidelines for compliance will be the previously approved contract documents and standards established by rules and procedures of the Commission.

**Occupancy.** The facility cannot be occupied until the owner has received written statement of compliance with approved contract documents and Jail Standards from the Executive Director.

**Laws Applicable.** The facility must conform to the building, safety and health requirements of state and local authority. State standards for a facility which exceed those of the local authority will take precedence. Where local building codes do not exist, standard or uniform building code will apply.

## SECURITY AND SOURCES OF PAYMENT

**Security for the Certificates.** Each Certificate represents a fractional undivided interest in the Principal Component and Interest Component of the Rental Payment due on its payment date from the County to the Corporation under the Lease Agreement. The Corporation, pursuant to the Assignment Agreement, has assigned all of its rights under the Lease Agreement, including its right to receive Rental Payments thereunder, to the Trustee for the benefit of the Owners. The County will pay Rental Payments directly to the Trustee, as assignee of the Corporation. See "**RISK FACTORS - Limited Recourse.**" The Corporation's assignment of the Rental Payments under the Lease Agreement is secured by a Deed of Trust and under the Assignment Agreement the Corporation has granted the Trustee an option to acquire title to the Facility and its underlying site for \$10.00 upon termination of the Lease Agreement because of non-appropriation by the County, default by the County under the Lease Agreement or Trust Agreement, or bankruptcy or insolvency of the Corporation.

**Obligation Subject to Annual Appropriation.** The obligation of the County to make Rental Payments under the Lease Agreement does not constitute a debt of the County or the State of Texas or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction, and does not constitute an obligation of the County for which the County or the State of Texas is obligated to levy or pledge any form of taxation or for which the County has levied or pledged any form of taxation.

The obligation of the County to make Rental Payments under the Lease Agreement is subject to annual appropriation. The County may, but is not obligated to, include all Rental Payments due under the Lease Agreement in its annual budget. Once the County has appropriated the funds for the Rental Payments due under the Lease Agreement for a budget year, then the County shall maintain the appropriation for the full fiscal year and shall expend on a monthly basis the appropriated funds for the Rental Payments due under such Lease Agreement during such budget year as Facility Revenues are received each month.

If, for any reason, the County fails or refuses to appropriate the Rental Payments due under the Lease Agreement in a particular fiscal year, the Lease Agreement will terminate and the Trustee may exercise his option to acquire the Facility and may sell or lease the Facility and retain the proceeds of such sale or lease for the benefit of the Certificate Owners, and the County will have no further obligation to make Rental Payments due under the Lease Agreement (other than the obligation to pay those Rental Payments due under the Lease Agreement for which sufficient funds have been previously appropriated by the County). Any proceeds remaining after such termination, lease or sale and payment of the amounts owing to the Certificate Owners shall be the property of the County.

**In the event the County fails to duly appropriate the Rental Payments due under the Lease Agreement in any particular fiscal year, there can be no assurance that, following termination of the Lease Agreement, the resale value or the revenues generated by any leasing of the Facility will**

**be sufficient to pay all unpaid Rental Payments evidenced by the Certificates. Furthermore, any termination of the Lease Agreement or leasing of the Facility by the Trustee may have the result of causing the Interest Components of the Rental Payments evidenced by the Certificates to become subject to federal and state income taxes. The Owners of the Certificates shall have no recourse against the County, and the County shall have no liability to the Owners, for any loss or damage resulting from or any penalties or additional taxes owing in the event the Interest Components of the Rental Payments evidenced by the Certificates become subject to federal or state income taxes as a result of any termination of the Lease Agreement or leasing of the Facility resulting from the failure of the County to appropriate the Rental Payments.**

**No Acceleration upon Default.** In the event of a default by the County, the remedy of acceleration of the total Rental Payments due over the term of the Lease Agreement is not available. The County will only be liable for Rental Payments on an annual basis, and upon default of the County the Trustee may accelerate only those Rental Payments due in the County's current fiscal year for which an appropriation has been made.

**Remedies.** Should the County default under the Lease Agreement, the Trustee may take possession and sublease the Facility and retain the proceeds of such sublease for the account of the Certificate Owners to the extent of the amounts owing to the Certificate Owners, or terminate the Lease Agreement and sell the Facility and retain the proceeds of such sale for the account of the Certificate Owners to the extent of the amounts owing to the Certificate Owners, and the County shall be liable only for the appropriated Rental Payments due under the Lease Agreement. Any proceeds remaining after such termination, sale or subleasing and payment of the amounts owing to the Certificate Owner shall be the property of the County.

Following termination of the Lease Agreement (whether due to non-appropriation or the occurrence of an Event of Default thereunder), the recourse of the Trustee and the Certificate Owners for the payment of the related Certificates will be limited to the amounts realized from the sale or re-leasing of the Facility, the moneys remaining on deposit in the various accounts established under the Trust Agreement and the unpaid Rental Payments due under the Lease Agreement which have theretofore been duly budgeted and appropriated by the County.

**There can be no assurance that the amounts realized by the Trustee by reason of actions taken following an Event of Default or non-appropriation will be sufficient to pay all unpaid Rental Payments evidenced by the Certificates.**

**Furthermore, the sale or re-leasing of the Facility following an Event of Default or the termination of the Lease Agreement due to non-appropriation may result in the Interest Components of the Rental Payments evidenced by the Certificates becoming subject to state and federal income taxes. The Owners of the Certificates shall have no recourse against the County, and the County shall have no liability to the Owners, for any loss or damage resulting from or any penalties or additional taxes owing in the event the Interest Components of the Rental Payments evidenced by the Certificates become subject to state and federal income taxes as a result of any termination of the Lease Agreement or re-leasing of the Facility following the failure by the County to appropriate funds sufficient to pay the Rental Payments due under the Lease Agreement.**

*For a description of the events of default and permitted remedies of the Trustee (as assignee of the Corporation), see the copies of the **Trust Agreement** and the **Lease Agreement** set forth in **Appendices B and C** hereto.*

**Bankruptcy.** In addition to the limitation on remedies contained in the Trust Agreement, the rights and remedies provided in the Trust Agreement and the Lease Agreement may be limited by and are subject to the provisions of federal bankruptcy laws, as now or hereafter enacted, and to other laws or equitable principles that may affect the enforcement of creditors' rights.

Under Chapter 9 of the Bankruptcy Code (Title 11, United States Code), which governs the bankruptcy proceedings for public agencies such as the County, there are no involuntary petitions in bankruptcy. If the County were to file a petition under Chapter 9 of the Bankruptcy Code, the Owners, the Trustee and the Corporation could be prohibited from taking any steps to enforce their rights under the Lease Agreement, and from taking any steps to collect amounts due from the County under the Lease Agreement.

If a Bankruptcy Court were to determine that the Lease Agreement is a "true" lease for the purposes of the Bankruptcy Code (as opposed to a "financing" lease), the County would have the right to reject (*i.e.*, terminate) the Lease Agreement. If the County rejected the Lease Agreement, the Corporation could elect to remain in possession of the Facility and the Facility could be re-let for the benefit of the Owners, but there can be no assurance that the Facility can be re-let for an amount sufficient to pay the Rental Payments evidenced by the Certificates or that such re-letting will not adversely affect the exclusion of any Interest Component of Rental Payments from federal or state income taxation. In addition, the Bankruptcy Code severely limits any claim for damages suffered as a result of rejection of a "true" lease.

**Reserve Account - Method of Funding and Application.** A Reserve Account is established by the Trust Agreement and held by the Trustee. The Reserve Account will initially be funded from a portion of the proceeds derived from the issuance and sale of the Certificates in an amount equal to \$999,000. Thereafter, to the extent investment earnings on the amounts on deposit in the Reserve Account exceed the amount of fees owing to the Trustee for services rendered under the Trust Agreement, such excess investment earnings shall be retained in the Reserve Account until the amounts held on deposit therein equal the Reserve Requirement (*i.e.*, the sum of \$1,400,000). Once the amounts on deposit in the Reserve Account equal the Reserve Requirement, such excess investment earnings shall be transferred to the Agreement Payment Account established under the Trust Agreement.

Amounts in the Reserve Account are to be used to make payment when due of the Interest Components, and Principal Components evidenced by the Certificates to the extent that amounts on deposit in the Agreement Payment Account are insufficient therefor, to pay amounts owed by the County due to a Determination of Taxability, and to pay the costs of any required environmental clean-up. The County will covenant in the Lease Agreement that in the event the Trustee is required to advance funds from the Reserve Account as aforesaid, the County will immediately take all budgetary steps available to replenish as soon as practicable, from appropriations of amounts legally available to the County, the funds so advanced from the Reserve Account. However, the Lease Agreement provides that the County is not required to appropriate any funds to make any payments under the lease Agreement from sources other than Project Revenues.

**Funds and Accounts.** A special trust fund designated as "The Newton County Trust Fund" (the "Trust Fund") is established by the Trust Agreement and held by the Trustee. Within the Trust Fund, there are established, for the benefit of the County and the Owners, the separate accounts described below, other than the Revenue Account, which is established by the Trust Agreement as a separate trust fund. The Trustee agrees to deposit, on behalf of the Corporation and for the benefit of the County, the proceeds from the sale of the Certificates plus accrued interest, if any, in the amounts and to the accounts established under the Trust Agreement as designated by the County and the Corporation (*see "Sources and Uses of Funds" below*). The moneys so deposited in the various accounts shall be applied as follows:

**1. Property Acquisition Account:** Amounts in the Property Acquisition Account shall be disbursed, upon receipt of the proper authorizations, for Financed Costs (as more particularly defined in the Trust Agreement, all costs and expenses incurred in relation to the Facility). After final disbursement in respect of the payment of all Financed Costs, as evidenced by a fully executed Acceptance Certificate, the Trustee will transfer any amount remaining in the Property Acquisition Account into the Agreement Payment Account.

**2. Agreement Payment Account:** Interest, Rental Payments, transfers from the Revenue Account and the Reserve Account and any other proceeds from the sale, condemnation or other disposition of the Facility shall be deposited by the Trustee in the Agreement Payment Account. To the extent of funds contained in the Agreement Payment Account, on each Certificate Payment Date, the Trustee shall withdraw from the Agreement Payment Account an amount equal to the amount of interest payments and principal payments due with respect to the Certificates and shall cause this amount to be so applied to the payment of such interest and principal on such Certificate Payment Date. Upon prepayment in whole of the Certificates, all funds in the Agreement Payment Account shall be transferred to the Redemption Account in accordance with the terms of the Trust Agreement. After the Certificate Payment Date, funds in the Agreement Payment Account in excess of the amounts necessary to replenish the Reserve Account, pay Trustee fees and expenses and satisfy the Rental Payment due on such Certificate Payment Date shall be transferred by the Trustee to the depository bank of the County or, by written instruction of the County, deposited in the Revenue Account as an advance against future Rental Payments.

**3. Reserve Account:** The Reserve Account shall be maintained by the Trustee until the Rental Payments are paid in full pursuant to the terms of the Lease Agreement. The Reserve Account will initially be funded from a portion of the proceeds derived from the issuance and sale of the Certificates in an amount equal to \$999,000. Thereafter, to the extent investment earnings on the amounts on deposit in the Reserve Account exceed the amount of fees owing to the Trustee for services rendered under the Trust Agreement, such excess investment earnings shall be retained in the Reserve Account until the amounts held on deposit therein equal the Reserve Requirement (i.e., the sum of \$1,400,000). Once the amounts on deposit in the Reserve Account equal the Reserve Requirement, such excess investment earnings shall be transferred to the Agreement Payment Account established under the Trust Agreement.

Amounts in the Reserve Account are to be used to make payment when due of the Interest Components, and Principal Components evidenced by the Certificates to the extent that amounts on deposit in the Agreement Payment Account are insufficient therefor, to pay amounts owed by the County due to a Determination of Taxability, and to pay the costs of any required environmental clean-up. The County will covenant in the Lease Agreement that in the event the Trustee is required to advance funds from the Reserve Account as aforesaid, the County will immediately take all budgetary steps available to replenish as soon as practicable, from appropriations of amounts legally available to the County, the funds so advanced from the Reserve Account. However, the Lease Agreement provides that the County is not required to appropriate any funds to make any payments under the lease Agreement from sources other than Project Revenues. In addition, cash on deposit in the Reserve Account shall be withdrawn and applied by the Trustee to the final payment of the Principal Components and Interest Components evidenced by the Certificates. Upon prepayment in whole pursuant to the Trust Agreement, all funds in the Reserve Account shall be transferred to the Redemption Account, and any funds remaining in the Redemption Account following payment of all principal, premium and interest due with respect to all Certificates shall be remitted by the Trustee to the County in accordance with the Trust Agreement. Investment earnings on the Reserve Account are to be used to pay fees and expenses of the Trustee.

**4. Redemption Account:** Funds to be used for prepayment of the Certificates pursuant to the Trust Agreement shall be transferred by the Trustee from the Property Acquisition Account, the Reserve Account and the Agreement Payment Account and deposited in the Redemption Account one day prior to the date fixed for retirement or other prepayment of the Certificates. Any funds remaining in the Redemption Account following redemption or other payment of all amounts due with respect to the Certificates shall be remitted by the Trustee to the County in accordance with the Trust Agreement.

**5. Special Rebate Account:** The Special Rebate Account shall be maintained by the Trustee until the Final Rebate Determination Date or until all payments required to be paid to the United States under Section 148 of the Internal Revenue Code have been made, unless an opinion of Independent Counsel is provided to the Trustee by the County or the Corporation to the effect that failure to make such application will not adversely affect the tax-exempt status of the interest component of the Certificates.

The Special Rebate Account is funded by transfers, from other accounts established under the Trust Agreement, of amounts attributable to excess earnings on investments of funds held in such accounts, as determined by an independent certified public accountant. The amounts on deposit in the Special Rebate Account will be used to make any rebate payments that may be or become owing to the United States of America pursuant to Section 148 of the Internal Revenue Code of 1986, as amended.

**6. Revenue Account:** Pursuant to the Trust Agreement there is also established a special account to be referred to as the Revenue Account. **The Revenue Account is not a trust fund and is not pledged as security for the payment of the principal and interest evidenced by the Certificates. The Revenue Account is held by the Trustee solely for the convenience of the County to facilitate transmittal of Rental Payments to the Agreement Payment Account.** Each month the County shall transfer the first \$106,000 of Project Revenues to the Trustee and the Trustee shall immediately deposit such funds in the Revenue Account. Such payment will not be required if the Trustee has notified the County that amounts sufficient to satisfy the next due Rental Payment are already on deposit in the Agreement Payment Account, or capitalized interest is similarly available. Each month, upon receipt of written instruction from the County, the Trustee shall withdraw all the funds from the Revenue Account and shall cause the same to be deposited in the Agreement Payment Account. This amount shall be applied to and credited, to the extent necessary, against the County's next succeeding Rental Payment.

**Application of Facility Revenues.** Under the Lease Agreement and the Management Agreement, the Facility Revenues which are then legally available to be expended for such purposes are to be applied for the following purposes and in the following order of priority:

**First:** Under the Lease Agreement and subject to certain exceptions (relating to the availability of capitalized interest to make Rental Payments during the initial lease period and to the sufficiency of amounts already on deposit in the Agreement Payment Account to pay the monthly Rental Payments due under the Agreement), the County agrees to transfer on a monthly basis to the Trustee, for deposit in the Revenue Account established under the Trust Agreement, the first \$106,000 of Facility Revenues received by the County during the preceding month. The amounts so deposited are to be transferred to the Agreement Payment Account established under the Trust Agreement upon disbursement thereof by the County and used to pay when due the principal and interest evidenced by the Certificates.

**Second:** After each monthly transfer of Facility Revenues to the Revenue Account as described in the immediately preceding paragraph, the Facility Revenues will be applied to pay the fees owing to the Management Company under the Management Agreement and retained by the County as described below. The Management Company will submit to the County on a monthly basis an invoice separately stating amounts owed to the Management Company and the amount to be retained by the County, arising from the operation of the Facility. Payment of the management fees shall be made by the County to the Management Company from the Available Amount. The Available Amount for each month is equal to the Facility Revenues for such month, after deducting the amount transferred to the Trustee for deposit in the Revenue Account for such month (as described in the immediately preceding paragraph), plus any amount returned to the County by the Trustee for such month. The payment of the fees to the Management Company and the amounts to be retained by the County from collections of the Available Amount shall be paid and retained in the following order of priority (which order of priority may be changed from time to time by the Management Company and the County in their discretion):

(a) paid to the Management Company for reimbursable costs and expenses for such month as provided in the Management Agreement;

(b) paid to the Management Company for the Fixed Monthly Fee (as defined in the Management Agreement) owed to the Management Company for such month and the fixed portion

of any fees payable for special services or special facilities provided by the Management Company pursuant to an amendment of the Management Agreement;

(c) retained by the County for the Fixed Amount (as defined in the Management Agreement) for such month;

(d) paid to the Management Company for the Gross Revenue Fee (as defined in the Management Agreement), if any, and the non-fixed portion of any fee payable to the Manager as a result of special services or facilities provided by the Management Company pursuant to an amendment of the Management Agreement; and

(e) retained by the County in the amount, if any, equal to the Available Amount for such month less the amounts described in (a), (b), (c) and (d) above for such month.

## SOURCES AND USES OF FUNDS

### Sources of Funds

Par Amount of Certificates .....	\$	10,300,000.00
Estimated Investment Earnings (1) .....		163,181.45
Accrued Interest (2) .....		<u>91,197.92</u>
 Total Sources .....	 \$	 10,554,379.37

① Assumes unexpended certificate proceeds are invested during the construction period at *per annum* rates ranging from 7.50% to 8.0%.

② Assumes that the Certificates are issued and delivered on July 16, 1990. Actual delivery date will be later in July, 1990, resulting in additional accrued interest.

### Uses of Funds

Underwriter/CFS Fee and Expenses (3) .....	\$	309,000.00
Lessor Fee and Expenses .....		206,000.00
Trustee Acceptance Fee and Expenses .....		12,500.00
Jail Consultant Fee and Expenses .....		25,000.00
Legal Counsel Expense .....		125,000.00
Miscellaneous Fees and Expenses .....		12,000.00
Accrued Interest .....		91,197.92
Capitalized Interest .....		827,640.52
Debt Service Reserve .....		999,000.00
Property Acquisition Account Deposit (4) .....		7,943,500.00
Contingency .....		<u>3,540.93</u>
 Total Uses .....	 \$	 10,554,379.37

③ CFS has provided services to the Underwriter in the structuring of the Facility financing, including certain statistical analyses relating to the Rental Payment schedule under the Lease Agreement and the structuring of the cash flows and investments of unexpended proceeds deposited in the Property Acquisition Account and the Reserve Account.

④ The Estimated Investment Earnings shown in the Sources table above are included in this line item. For a breakdown of the budgeted Facility costs, see the table *supra* under "The Facility".



## DESCRIPTION OF THE CERTIFICATES

**Preparation of Certificates.** The Corporation will authorize the Trustee to prepare, execute and deliver Certificates in an aggregate principal amount of \$10,300,000 evidencing proportionate ownership interests in Rental Payments to be paid by the County under the Agreement. At any time while the Certificates are outstanding, no additional certificates payable from Rental Payments and secured by a lien and charge upon the Rental Payments securing the Outstanding Certificates shall be issued hereunder.

**Form of Certificates; Medium of Payment.** The Certificates shall be issued in fully registered form in minimum initial denominations of \$100,000.00 and in integral multiples of \$5,000.00 in excess of \$100,000.00; *provided that* each Owner shall receive only one Certificate, which Certificate shall represent such Owner's entire proportionate interest in the Rental Payments. The Certificates shall be payable by check or by other customary means as agreeable between the Trustee and the Owners solely in lawful money of the United States of America.

**Date of Certificates.** The Certificates shall be dated as of the date of their execution and delivery. Each Certificate shall bear interest from the Certificate Payment Date to which interest has been paid next preceding the date of execution and delivery thereof unless (a) it is executed and delivered after the first day of the month of a Certificate Payment Date (the "Next Certificate Payment Date"), in which event it shall bear interest from the Next Certificate Payment Date, or (b) it is executed and delivered prior to December 15, 1990, in which event it shall bear interest from June 15, 1990. The Trustee shall insert the date of execution of each Certificate on the place provided for such purpose on the Certificate.

**Interest Rate.** The principal evidenced by the Certificates shall bear interest at the rate of 9.375% *per annum*. If the County does not elect to prepay the Certificates following a Determination of Taxability as described below, then upon a Determination of Taxability the principal evidenced by the Certificates shall bear interest at the rate of 12.375% *per annum*.

**Payment of Principal and Interest with Respect to Certificates.** Principal with respect to the Certificates shall be payable semiannually on the Certificate Payment Dates, beginning December 15, 1991, in an aggregate amount equal to the sum of the portions of the Rental Payments due on the 15th day of each of the preceding six (6) months which are designated as the principal portion in accordance with the Schedule of Rental Payments set forth in the Lease Agreement and the Trust Agreement. The aggregate principal due on the Certificates to maturity or at prepayment thereof, whichever is earlier, is the sum of the portions of each Rental Payment to be paid prior to the maturity date for the respective Certificate which portions are designated as principal portions on the Schedule of Rental Payments set forth in the Lease Agreement and the Trust Agreement. In accordance with the terms of the Lease Agreement and the Trust Agreement, the principal evidenced by the Certificates will be payable on the following Certificate Payment Dates and in the following amounts:

<b>Certificate Payment Date:</b>	<b>Principal Amount Due:</b>
December 15, 1991	\$100,000
June 15, 1992	100,000
December 15, 1992	100,000
June 15, 1993	100,000
December 15, 1993	100,000
June 15, 1994	100,000
December 15, 1994	100,000
June 15, 1995	100,000
December 15, 1995	100,000
June 15, 1996	100,000
December 15, 1996	100,000
June 15, 1997	200,000
December 15, 1997	200,000
June 15, 1998	200,000
December 15, 1998	200,000
June 15, 1999	200,000
December 15, 1999	200,000
June 15, 2000	200,000
December 15, 2000	200,000
June 15, 2001	200,000
December 15, 2001	200,000
June 15, 2002	200,000
December 15, 2002	200,000
June 15, 2003	300,000
December 15, 2003	300,000
June 15, 2004	300,000
December 15, 2004	300,000
June 15, 2005	300,000
December 15, 2005	300,000
June 15, 2006	300,000
December 15, 2006	300,000
June 15, 2007	400,000
December 15, 2007	400,000
June 15, 2008	400,000
December 15, 2008	400,000
June 15, 2009	400,000
December 15, 2009	500,000
June 15, 2010	500,000
December 15, 2010	500,000
June 15, 2011	600,000

Interest with respect to the Certificates shall be payable semiannually on the Certificate Payment Dates, beginning December 15, 1990, to and including the date of maturity or prepayment, whichever is earlier, as shown on the Schedule of Rental Payments set forth in the Lease Agreement and the Trust Agreement. The aggregate of said interest is the sum of the portions of each Rental Payment which are designated as interest on the Schedule of Rental Payments, which is set forth in the Lease Agreement.

Payments of principal and interest on the Certificate Payment Date and made with respect to any Certificates shall be made to the person appearing on the Certificate Register of the Trustee as the Owner thereof at the close of business on the first calendar day of the month of the Certificate Payment Date. The final distribution of principal with respect to any Certificate shall be made only upon surrender of such Certificate to the Trustee at its Principal Office.

If a Certificate shall not be presented for payment when the final principal payment thereof becomes due, either at maturity or at the date fixed for prepayment thereof, and funds sufficient to pay such Certificate shall have been made available to the Trustee for the benefit of such Certificate Owner, it shall thereafter be the duty of the Trustee to hold such funds, without liability for interest thereon or the benefit of any "float" earned by the Trustee, for the benefit of such Certificate Owner. Such Certificate Owner shall thereafter be restricted exclusively to such funds for any claim of whatever nature he may have under the Trust Agreement or on, or with respect to, said Certificate. The Trustee's obligation to hold such funds shall continue for a period of three years following the date on which the principal of the Certificate became due (whether at maturity, or at the date fixed for prepayment thereof), or otherwise, as the case may be, at which time the Trustee shall surrender any remaining funds so held by it.

**Certificate Register.** The Trustee will maintain a register of the name and address of each Certificate Owner and, if a Certificate is transferred pursuant to the terms of the Trust Agreement, of the successor Owner of such Certificate. The Trustee shall deem and treat the person or entity in whose name any Outstanding Certificate shall be registered upon the Certificate Register as the absolute Owner of such Certificate, whether such Certificate shall be overdue or not, for the purpose of receiving payments of, or on account of, the principal, premium if any and interest payments with respect to such Certificate and for all other purposes, and all such payments so made to any such Owner or upon his or her order shall be valid and effectual to satisfy and discharge the liability upon such Certificate to the extent of the sum or sums so paid, and neither the Obligor nor the Trustee shall be affected by any notice to the contrary.

**Transfer of Certificates; Restrictions.** These Certificates are transferrable only to a sophisticated investor and in the manner and subject to the terms and conditions set forth in the Trust Agreement. The Trustee will register the transfer of a Certificate only upon the execution of an Investment Letter, in the form attached to this Official Statement, by the transferee, and the delivery of such letter to the Trustee.

**Exchange of Certificates.** Subject to the terms and provisions set forth in the Trust Agreement, Certificates may be exchanged upon surrender thereof for cancellation at the Principal Office of the Trustee, for a like aggregate amount of Certificates of the same maturity.

**Prepayment Provisions.** The Certificates are subject to prepayment under the circumstances and on the terms and conditions set forth below.

**Prepayment Upon Leasing or Subleasing Following Event of Default.** The Certificates shall be subject to prepayment prior to final maturity as a whole, but not in part, at the prepayment price determined as set forth below, together with accrued interest to the date fixed for prepayment, from the proceeds of the sale or other disposition of the Facility. If all or a portion of the Facility has been leased or subleased following an Event of Default under the Trust Agreement as provided in Section 5.02(a)(iv) of the Trust Agreement and if payments with respect to such lease or sublease will be received by the Trustee after the date fixed for prepayment, the Owners of fifty-one percent (51%) of the aggregate principal amount of the Certificates then Outstanding shall determine whether the Trustee's interest in such lease or sublease will be liquidated prior to prepayment or whether the Trustee shall retain its interest in the lease or sublease and distribute the payments received pursuant thereto on the Certificate Payment Dates in the proportion the unamortized principal of each Outstanding Certificate bears to the total unamortized principal of all Outstanding Certificates. Should the Owners fail to so determine, the Trustee

will not liquidate its interest in such lease or sublease. In the event such prepayment is made, all Certificates shall be called for prepayment as soon as reasonably practicable, and, if there are not sufficient funds available to pay in full all interest and principal then due on the Certificates then Outstanding, the Trustee shall apply all available funds, after deduction of the fees and expenses of Trustee described in the Trust Agreement, first to the payment of all interest due with respect to such Certificates, pro rata if necessary, according to the total interest payment due, and second to the payment of the principal of such certificates, pro rata if necessary.

**Prepayment Upon Casualty or Condemnation.** The Certificates shall be subject to prepayment prior to their final maturity in whole, but not in part, at par in accordance with and at a prepayment price equal to the unpaid principal components plus the accrued and unpaid interest components evidenced thereby, in the event of a casualty loss or condemnation of the Facility and an election by the County to purchase the Facility pursuant to the Lease Agreement, on the next succeeding Certificate Payment Date following such an event.

**Prepayment Out of Surplus Proceeds.** The Certificates shall be subject to prepayment from funds in the Property Acquisition Account prior to their final maturity, at par, in whole or in part, if all or a part of the Improvements are deleted from the Lease Agreement or if and to the extent that the amount on deposit in the Property Acquisition Account after final disbursement for payment of all Financed Costs, as evidenced by the fully executed Acceptance Certificate, exceeds \$100,000. Certificates to be so prepaid shall be prepaid as soon as possible on a regular Certificate Payment Date, but in no event later than on December 15, 1992. In the case of an Improvement deletion prepayment, the principal amount to be prepaid shall be equal to the total amount of funds in the Property Acquisition Account on October 15, 1992, and otherwise to the amount remaining on the date of final disbursement, in each case rounded down to the next integral multiple of \$100,000 (the "Base Amount"). The Base Amount shall be transferred from the Property Acquisition Account to the Prepayment Account on or before the Business Day immediately preceding the prepayment date. The Certificates to be prepaid shall be in inverse order of the principal portion due on the Certificates. Except as provided below, the Certificates will be prepayable only in multiples of \$100,000. In order to achieve a prepayment, at least one Certificate held by each Owner may be partially prepaid in an amount less than \$100,000. In the case of a Certificate in a denomination greater than \$100,000, the Trustee shall treat such Certificate as representing such number of separate Certificates each of the denomination of \$100,000 as is obtained by dividing the actual principal amount of such Certificate by \$100,000.

**Prepayment At County's Election Following Determination of Taxability.** The Certificates shall be subject to prepayment prior to their final maturity, on the next succeeding Certificate Payment Date after a Determination of Taxability as set forth in the Lease Agreement, in whole, but not in part, at 108% of the unpaid principal balance of the Certificates then outstanding, if the County so elects and pays the amount required by the Lease Agreement.

**Prepayment on Corporation's Bankruptcy.** On the first succeeding Certificate Payment Date subsequent to the filing of a petition in bankruptcy by or against the Corporation (if the Corporation has consented to or acquiesced in the filing of such petition in bankruptcy against the Corporation) and on the first succeeding Certificate Payment Date subsequent to the expiration of sixty days after the filing of a petition in bankruptcy against the Corporation (if such petition is not dismissed within such sixty day period), the County can purchase the Facility and cause prepayment of the Certificates, in whole but not in part, at a prepayment price equal to the applicable Concluding Payment for such Certificate Payment Date plus the Rental Payment due on the May 15 or November 15 next preceding such Certificate Payment Date.

**Optional Prepayment.** The Certificates shall be subject to prepayment at the option of the County, in whole, on or after June 15, 2000, any such prepayment to be at a price equal to the principal amount to be prepaid plus accrued and unpaid interest thereon through the date fixed for prepayment thereof

plus a premium (expressed as a percentage of the principal amount to be prepaid) as set forth in the table below:

<b>Prepayment Dates</b>	<b>Premium</b>
June 15, 2000 and December 15, 2000	5%
June 15, 2001 and December 15, 2001	4%
June 15, 2002 and December 15, 2002	3%
June 15, 2003 and December 15, 2003	2%
June 15, 2004 and December 15, 2004	1%
June 15, 2005 and thereafter	0%

**Notice of Prepayment.** When prepayment is authorized or required by the Trust Agreement, the Trustee shall issue the notice of prepayment to the Owners of Outstanding Certificates. Each notice of prepayment shall set forth the prepayment date, the prepayment price and the place of payment. Each notice shall further state that on the date specified there shall become due and payable upon the Certificates to be prepaid the principal and premium (if any) thereof, together with accrued interest to said date, and that from and after such date interest thereon shall cease to accrue and be payable on the principal amount of the Certificates to be prepaid.

The Trustee shall issue a notice of prepayment when an amount equal to the amount necessary to pay the principal, premium (if any) and interest due on the Certificates to be prepaid is on deposit in the Trust Funds. The following amounts are deemed to be on deposit in the Trust Funds and available to pay the prepayment price: (i) amounts to be transferred to the Prepayment Account from the Property Acquisition Account, Agreement Payment Account and Reserve Account, and (ii) interest or income accrued and payable on or before the prepayment date on amounts invested in Permitted Investments, less the fees and expenses of the Trustee.

Each notice of prepayment shall be mailed first class, postage prepaid, to the respective Owners of any Certificates designated for prepayment at their addresses appearing on the Certificate Register, as soon as practicable but not less than twenty (20) calendar days nor more than forty (40) calendar days prior to the prepayment date.

**Effect of Prepayment.** When notice of prepayment has been duly given as aforesaid, the Certificates called for prepayment shall, on the date designated in such notice, become due and payable at the amount specified in such notice. From and after the date designated for prepayment, interest on the Certificates called shall cease to accrue, said Certificates shall cease to be entitled to any benefit or security under the Trust Agreement, and the owners of the Certificates shall have no rights in respect thereof except to receive payment of the specified amount. The Trustee shall, upon surrender for payment of any of said Certificates, pay such Certificates at the specified amount as aforesaid. If the specified amount shall not be available on the date designated, Certificates called for prepayment but not prepaid shall continue to bear interest until paid at the same rates as they would have borne had they not been so called. In the event of a partial prepayment, any Certificate representing the portion of the Certificate that is not called for prepayment may be surrendered, for transfer and exchange, to the Trustee, and a new Certificate shall be issued in the amount of the Certificate not so called for prepayment.

Except as otherwise provided in the Trust Agreement, all Certificates prepaid shall be cancelled upon surrender, and no Certificates shall be issued in place thereof. All funds held by or on behalf of the Trustee for the prepayment of particular Certificates shall be held in trust, subject to the applicable escheat laws of the State of Texas, for the account of the Owners of the Certificates to be prepaid.

## THE COUNTY

**The County.** The County is located on the eastern border of Texas approximately 120 miles northeast of Houston and 60 miles northeast of Beaumont. Its population has remained at 13,275 for the past three years. Unemployment rates for the County were 10.9% in 1988, 11.6% in 1987 and 12.3% in 1986.

The assessed valuation of County property in 1989 was \$389,748,561. The largest taxpayers (and major employers) are Kirby, Temple, Gulf States Utilities, Champion, Contel Telephone, Arco, Texas Eastern, Louisiana Pacific and Jones Enterprises.

The County's fiscal year is January 1 - December 31. The most recent financing, a Certificate of Obligation issue for the existing County jail, was dated July 15, 1981 and rated Baa2. The remaining balance of \$185,000 will be paid in full July 15, 1991.

**Selected County Financial Information.** The following selected financial information is taken from the County's 1990 Fiscal Year budget documents. Additional information can be obtained from Newton County, Texas, c/o Lee Roy Fillyaw, County Judge, PO Box J, Newton, Texas 75966.

**THE SELECTED COUNTY FINANCIAL INFORMATION IS NOT A COMPLETE SET OF AVAILABLE COUNTY FINANCIAL INFORMATION. ALL COUNTY FINANCIAL INFORMATION INCLUDED HEREIN IS UNAUDITED. THE COUNTY HAS NOT HAD AN AUDIT OF ITS FINANCIAL CONDITION OR STATEMENTS FOR THE LAST SEVERAL YEARS.**

**NEWTON COUNTY, TEXAS  
TAXABLE VALUATION  
1989 APPRAISAL ROLL**

[UNAUDITED]

(Prepared by Newton Central  
Appraisal District August 14, 1989)

	<u>COUNTY</u>	<u>SPECIAL</u>
1989 Taxable on the 1989 certified roll today	\$346,368,965	\$338,532,733
Value of new improvements added in 1989	<u>196,010</u>	<u>157,020</u>
Adjusted 1989 Taxable Value	\$346,172,955	\$338,375,713
1989 Effective Tax Rate per \$100 valuation	\$ .5090	\$ .1165
Maximum rate unless county publishes notices and holds hearings	<u>x 1.03</u>	<u>x 1.03</u>
TOTAL MAXIMUM RATE	\$ .5243	\$ .1200
TAX RATE ADOPTED	\$ .4978	\$ .1156

## EFFECTIVE AND MAXIMUM TAX RATES 1989 Property Tax Rates in Newton County

[UNAUDITED]

**Explanation:** The 1988 tax rate is the actual rate the taxing unit used to determine property taxes last year. The 1989 effective tax rate would impose the same total taxes as 1988 for comparable properties taxed in both years. The 1989 rollback tax rate is the highest tax rate the taxing unit can set before taxpayers can start tax rollback procedures. In each case these rates are found by dividing the total amount of taxes by the tax base (the total value of taxable property) with adjustments as required by state law. The rates are given per \$100 of property value.

	<u>General Fund</u>	<u>Farm to Market/ Flood Control Fund</u>	<u>Special Road/ Bridge Fund</u>
<b>1988 tax rate:</b>			
1988 operating taxes	\$ 1,429,195.00	\$ 410,016.00	\$ 195,077.00
1988 debt taxes	\$ 141,349.00	\$ -0-	\$ -0-
1988 total taxes	\$ 1,570,544.00	\$ 410,016.00	\$ 195,077.00
1988 tax base	\$ 354,684,725.00	\$ 354,684,725.00	\$ 354,684,725.00
1988 total tax rate	\$ <u>.4428/\$100</u>	\$ <u>.1156/\$100</u>	\$ <u>.0550/\$100</u>
 <b>1989 effective tax rate:</b>			
1988 adjusted taxes (after subtracting taxes on 1st property)	\$ 1,568,912.00	\$ 394,318.00	\$ 195,051.00
1989 adjusted tax base (after subtracting taxes on new property)	\$ 346,172,955.00	\$ 338,375,713.00	\$ 346,172,955.00
1989 effective tax rate for each fund	\$ .4532/\$100	\$ .1165/\$100	\$ .0563/\$100
Total effective tax rate	\$ .6260/\$100		
1.03 = maximum rate unless unit publishes notices and holds hearing	\$ .64478/\$100		
 <b>1989 rollback tax rate:</b>			
1988 adjusted operating taxes (after subtracting taxes on lost property)	\$ 1,427,185.00	\$ 394,318.00	\$ 195,051.00
1989 adjusted tax base	\$ 346,172,955.00	\$ 338,375,713.00	\$ 346,172,955.00
1989 effective operating rate	\$ .4123/\$100	\$ .1165/\$100	\$ .0563/\$100
1.08 = 1989 maximum operating rate	\$ .44528/\$100	\$ .12582/\$100	\$ .0608/\$100
1989 debt rate	\$ .02000/\$100	\$ -0-/\$100	\$ -0-/\$100
1989 rollback rate for each fund	\$ .46528/\$100	\$ .12582/\$100	\$ .0608/\$100
1989 rollback rate	\$ .65190/\$100		



**NEWTON COUNTY, TEXAS  
ESTIMATED TAX INCOME  
CURRENT TAXES  
[UNAUDITED]**

	<u>COUNTY</u>	<u>SPECIAL</u>
Net Taxable Valuation	346,172,955	338,375,713
Collection ratio	<u>90%</u>	<u>90%</u>
	311,555,660	304,241,225
Rate per \$100 valuation	x 00.4978	x 00.1156
Total Tax	<u>1,550.924</u>	<u>351.703</u>
<u>Allocation of Income</u>		
General Fund	00.4128	1,286,101
Road & Bridge Fund	00.0550	171,356
Jail Certificate Sinking Fund	<u>00.03</u>	<u>3467</u>
TOTAL	<u>00.4978</u>	<u>1,550.924</u>
Right of Way (20%)		70,340
Commissioners Special Fund (Each for 20% of total)		<u>281,363</u>
TOTAL		<u>351.703</u>

**DELINQUENT TAXES  
[UNAUDITED]**

	<u>TAXES</u>	<u>PENALTY INTEREST</u>
General Fund	14,910	7,455
Road & Bridge General Fund	1,990	995
Jail Certificates Fund	<u>1.100</u>	<u>550</u>
Total County Taxes	<u>18.000</u>	<u>9.000</u>
Right of Way	750	250
Commissioners Special	<u>3.000</u>	<u>1.000</u>
Total Special Taxes	3,750	1,250

**January 1990  
STATEMENT OF INDEBTEDNESS BONDS  
AND TIME WARRANTS**

[UNAUDITED]

<u>County Wide:</u>	<u>DATE OF ISSUE</u>	<u>DATE OF MATURITY</u>	<u>INTEREST RATE</u>	<u>AMOUNT ISSUED</u>	<u>AMOUNT RETIRED</u>	<u>AMOUNT OUTSTANDING</u>
Jail Certificates of Obligations	7-15-81	SERIAL '91	9.7	600,000.00	415,000.00	185,000.00
<u>Time Warrants:</u>						
Road & Bridge Precinct No 1	2-19-87	SERIAL '90	5.625	46,000.00	30,000.00	16,000.00
Road & Bridge Precinct No 1	7-21-88	SERIAL '92	7.125	29,500.00	7,375.00	22,125.00
Road & Bridge Precinct No 4	2-01-87	SERIAL '91	7.004	55,000.00	27,500.00	27,500.00
Road & Bridge Precinct No 4	7-21-88	SERIAL '90	7.13	14,000.00	7,000.00	7,000.00
Commissioners Special Precinct No 3	2-15-89	SERIAL '92	8.25	<u>57,000.00</u>	<u>-0-</u>	<u>57,000.00</u>
TOTALS				801,500.00	486,875.00	314,625.00

**PROJECTION OF DEBT SERVICE PAYMENTS TO MATURITY**

[UNAUDITED]

	<u>1990</u>	<u>1991</u>	<u>1992</u>
Jail Certificates	92,795.00	120,670.00	-0-
Road & Bridge Precinct No 1	25,851.00	8,496.00	7,901.00
Road & Bridge Precinct No 4	22,995.00	14,625.00	-0-
Commissioners Special No 3	24,486.00	22,135.00	20,568.00

**1990  
DEBT SERVICE REQUIREMENTS**

[UNAUDITED]

<b>BONDS AND WARRANTS</b>	<b>PRINCIPAL</b>	<b>INTEREST</b>	<b>TOTAL</b>	<b>PRINCIPAL DUE</b>
Jail Certificates	\$75,000.00	\$17,795.00	\$92,795.00	07/15
Road & Bridge Precinct No 1 (A)	7,375.00	1,576.00	8,951.00	08/02
Road & Bridge Precinct No 1	16,000.00	900.00	16,900.00	04/02
Road & Bridge Precinct No 4	13,750.00	1,750.00	15,500.00	04/01
Road & Bridge Precinct No 4	7,000.00	499.00	7,499.00	08/01
Commissioners Special Pct No 3	<u>19,000.00</u>	<u>3,130.00</u>	<u>22,130.00</u>	04/15
<b>TOTALS</b>	<b><u>\$138,125.00</u></b>	<b><u>\$25,650.00</u></b>	<b><u>\$163,775.00</u></b>	

**UNENCUMBERED BALANCES JULY 10, 1989:**

Hospital Bonds	4,210.86
Jail Certificates	10,340.12

(A) This is the amount due but the Commissioner intends to pay this debt in 1989 so the debt service of \$8,951 is not included in the 1990 budget.

**BUDGET SUMMARY FOR 1990**  
**[UNAUDITED]**

	<u>General Fund</u>	<u>Road &amp; Bridge (Combined)</u>	<u>Other Special Revenue (Combined)</u>	<u>Funds (Combined)</u>	<u>All Other Total All Funds</u>
CASH BALANCE, BEGINNING OF YEAR	80,000	99,253	50,000	13,200	242,453
<b>RECEIPTS</b>					
County Ad Valorem Taxes	1,301,011	173,346	355,453	94,567	1,924,377
Other Taxes, Penalty & Interest	7,955	1,100	1,250	550	10,855
Licenses & Permits	5,500	370,000	-0-	-0-	375,500
Federal Government	-0-	29,012	-0-	6,000	35,012
State Government	4,530	-0-	-0-	3,000	7,530
Fees of Office	135,126	-0-	-0-	-0-	135,126
Fines	63,500	38,000	-0-	-0-	101,500
Interest	35,000	6,200	2,000	783	43,983
Other Receipts	30,800	7,200	-0-	16,200	54,200
<b>TOTAL RECEIPTS</b>	<b>1,583,422</b>	<b>624,858</b>	<b>358,703</b>	<b>121,000</b>	<b>2,688,083</b>
Transfers (From/To) Other Funds	(9,800)	3,000	-0-	6,800	-0-
<b>TOTAL RESOURCES AVAILABLE</b>	<b>1,653,622</b>	<b>727,111</b>	<b>408,703</b>	<b>141,100</b>	<b>2,930,536</b>
<b>EXPENDITURES</b>					
Salaries & Wages	585,799	363,360	-0-	11,076	960,235
Benefits	183,509	93,565	0-	1,565	278,639
Other Operating Items	786,555	151,794	265,363	12,855	1,216,567
Capital Outlay	19,000	-0-	100,000	6,440	125,440
Debt Service	-0-	46,529	15,500	92,795	154,824
<b>TOTAL EXPENDITURES</b>	<b>1,574,863</b>	<b>655,248</b>	<b>380,863</b>	<b>124,731</b>	<b>2,735,705</b>
CASH BALANCE, END OF YEAR	78,759	71,863	27,840	16,369	194,831

## TAX EXEMPTION

In the opinion of Winstead Sechrest & Minick P.C., Dallas, Texas, as Special Tax Counsel, the component of each Rental Payment designated as, and evidencing and representing, interest paid by the County under the Lease Agreement received by the Owners of the Certificates:

(i) is excludable from the gross income, as defined in Section 61 of the Internal Revenue Code of 1986, as amended to the date of issuance of the Certificates (the "Code"), of each such Owner thereof for federal income tax purposes pursuant to Section 103 of the Code and existing regulations, published rulings, and court decisions thereunder; and

(ii) is not a specific preference item under the alternative minimum tax provisions of the Code as applicable to individuals and corporations, except that interest on the Certificates will be included in the "adjusted net book income" or the "adjusted current earnings" of certain corporations for purposes of computing the alternative minimum tax and the environmental tax imposed on such corporations.

In rendering such opinion, Special Tax Counsel will rely on certain representations of the County and will assume compliance by the County with certain covenants relating to federal tax matters. Failure by the County to comply with such covenants may cause such interest to be includable in the gross income of the owners of the Certificates from the date of issuance of the Certificates. Also, interest received by a foreign corporation may be subject to the branch profits tax imposed by the Code and interest received by an S corporation may be subject to the tax on excess net passive income. Except as described above, Special Tax Counsel expresses no opinion with respect to any other federal, state or local tax consequences under present law or proposed legislation resulting from the receipt or accrual of the interest component of each Rental Payment, or upon the acquisition, ownership or disposition of the Certificates.

Ownership of the Certificates may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry, or who have paid or incurred certain expenses allocable to, the Certificates. Special Tax Counsel will express no opinion as to such consequences, and prospective purchasers of the Certificates should consult their own tax advisors as to such consequences.

Special Tax Counsel will express no opinion as to the treatment for federal income tax purposes of any payment made with respect to the Certificates upon the occurrence of an event of default (as such term is defined in the Lease Agreement) or upon termination of the Lease Agreement for any reason.

Special Tax Counsel will express no opinion as to the validity and enforceability of the Lease Agreement or the other documents contemplated thereby, and will rely upon the legal opinion of the special counsel of the County as to the matters stated therein. The engagement of Special Tax Counsel assumes no responsibility with respect to any statements made to any person in this Official Statement or in any other document in connection with the offering or sale of the Certificates. Winstead Sechrest & Minick P.C. is counsel for Texas Detention Management, Inc. and Hale-Mills Construction, Inc.

**Not Qualified Tax-Exempt Obligations.** The Lease Agreement is not a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code, relating to the ability of financial institutions to deduct from gross income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.

## CERTAIN LEGAL MATTERS

In the opinion of Haley, Davis, Wren, Bristow & Rasner, Special Counsel to the County, the relevant statutes and laws have been complied with to render each of the Lease Agreement, Trust Agreement and Management Agreement legal, valid and binding obligations of the County, enforceable in accordance with their terms. Issuance of the Certificates will also be subject to the approving legal opinion of the Attorney General of the State of Texas as to the Lease Agreement. The Attorney General's opinion is in no way intended nor should it be considered as an opinion upon the security for or sources of payment of the Certificates, or upon their suitability as an investment.

## LITIGATION

At the time of delivery of and payment for the Certificates, the County and the Corporation will certify that there is no action, suit, litigation, inquiry or investigation before or by any court, governmental agency, public board or body pending, or to the knowledge of the County or the Corporation threatened, against the County or the Corporation in any material respect affecting the existence of the County or the Corporation or the titles of their officers to their respective offices or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Certificates or the payment of Rental Payments or affecting the County or the Corporation, challenging the validity or enforceability of, or in which an unfavorable decision, ruling or finding would materially adversely affect, the Facility, the Trust Agreement, the Lease Agreement, the Assignment Agreement, any of the transactions contemplated by such instruments and the Official Statement or the performance by the County or the Corporation of any of their respective obligations thereunder or hereunder or contesting the completeness or accuracy of this Official Statement or any amendment or supplement hereto or which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid with respect to the Certificates nor, to the best of the County's or the Corporation's knowledge, is there any basis therefor.

## UNDERWRITING

Prager McCarthy & Lewis (the "Underwriter") has agreed to purchase the Certificates at a price of \$10,300,000 plus accrued interest (if any). The Underwriter shall receive a fee of \$309,000 for services rendered in underwriting the Certificates, which fee will be paid from the proceeds of the Certificates. The Underwriter's fee includes the fee in the amount of \$134,000 to be paid to California Financial Services for services rendered in structuring the financing of the Facility. The Purchase Contract relating to the Certificates provides that the Underwriter will purchase all of the Certificates if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in said Purchase Contract, the approval of certain legal matters by counsel and certain other conditions. The Underwriter has agreed to pay a portion of its underwriting discount to California Financial Services for services rendered in connection with the structuring of the lease financing of the Facility.

## MISCELLANEOUS

**The summaries or references to the Trust Agreement, the Lease Agreement, the Management Agreement, the Assignment Agreement and other documents, agreements and statutes referred to herein, and the description of the Certificates included in this Official Statement, do not purport to be comprehensive or definitive, and such summaries, references**

**and descriptions are qualified in their entirety by reference to each such document or statute. Copies of the documents mentioned under this heading are available for inspection at the County and following delivery of the Certificates will be on file at the offices of the Trustee in Houston, Texas.**

**References are made herein to certain documents and reports which are brief summaries thereof which do not purport to be complete or definitive. Reference is made to such documents and reports for full and complete statements of the content thereof.**

**Any statement in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the County and the purchasers or Owners of any of the Certificates.**

# **EXHIBIT 1**

## **FORM OF INVESTMENT LETTER**

[To be dated the date of purchase.]

County of Newton  
County Courthouse  
Newton, TX 75966

Prager McCarthy & Lewis  
One Maritime Plaza, 11th Floor  
San Francisco, CA 94111

California Financial Services  
5000 Birch Street  
Newport Beach, CA 92660

NCNB Texas National Bank  
700 Louisiana Street  
32nd Floor  
Houston, TX 77002

Re: \$10,300,000 County of Newton, Texas Certificates of Participation in Lease Purchase Agreement (Detention Facility Acquisition Project)

Ladies and Gentlemen:

In connection with our purchase of the above-referenced certificates of participation (the "Certificates") issued pursuant to a Trust Agreement Relating to a Detention Facility Acquisition Project (the "Trust Agreement"), dated as of June 15, 1990, by and among the County of Newton, Texas (the "County"), Diversified Municipal Services of Texas, Inc. (the "Corporation") and NCNB Texas National Bank, as Trustee (the "Trustee"), the undersigned (the "Purchaser") hereby represents, warrants and agrees that:

1. The Purchaser is an "accredited investor" pursuant to Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission in accordance with the Securities Act of 1933, as amended. The Purchaser has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of certificates of participation in lease obligations, tax-exempt securities and other investment vehicles similar in character to the Certificates, to be able to evaluate the risks and merits of the investment represented by the purchase of the Certificates.
2. An official statement describing the Certificates, the security therefor and certain risks associated with investing in the Certificates and containing certain limited information with respect to the County; the Trust Agreement; and the Lease Agreement have been delivered to and reviewed by the Purchaser prior to its



commitment to purchasing the Certificates. The Purchaser understands that said official statement contains only limited information and does not necessarily set forth all information that is or may be material in connection with a determination by the Purchaser of whether or not to purchase the Certificates. In addition to reviewing the official statement, the Purchaser has made its own inquiry and analysis, to the extent it has deemed appropriate, with respect to the County, the Certificates and other material factors affecting the credit standing of the County, the security for the Certificates and the ability of the County to fulfill its obligations under the Lease Agreement (the "Lease"), dated as of June 15, 1990, by and between the County, as lessee, and the Corporation, as lessor. The Purchaser understands that no financial information or statistical data in connection with this transaction has been reviewed by the Trustee, Winstead Sechrest & Minick P.C., special tax counsel ("WS&M"). The Purchaser further understands that: (i) the review by Stoel Rives Boley Jones & Grey, counsel to Prager McCarthy & Lewis ("SRBJG") and by Prager McCarthy & Lewis of the financial and statistical data in connection with this transaction has been limited to discussions with the parties providing such data with no independent verification of the truth or accuracy of such data; and (ii) such data consists largely of projections and estimates relating to the County's, the Corporation's and the Management Company's expectations with respect to the Facility, and therefore there can be no assurance that such data accurately represents the actual state of affairs that will attain with respect to the Facility over time.

3. The Purchaser either has been supplied with or has had access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the County, its credit standing, the Lease and the Certificates so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Certificates.

4. The Purchaser acknowledges that neither Prager McCarthy & Lewis ("PML"), California Financial Services ("CFS"), SRBJG nor WS&M has made any representation regarding the quality, creditworthiness or liquidity of the Certificates. The Purchaser has not relied upon any statements made by or any information prepared by PML, CFS, SRBJG or WS&M in arriving at its purchase decision.

5. The Certificates (a) are not being registered under the Securities Act of 1933, as amended, and are not being registered or otherwise qualified for sale under the "blue sky" laws of any state, (b) will not be listed on any stock or other securities exchange, (c) will not carry a rating from any rating service, and (d) will be subject to restrictions on their sale, transfer or other disposition as described in the official statement referred to above and therefore will not be readily marketable. The Purchaser acknowledges that the Certificates cannot be sold unless they are subsequently registered under such acts or an exemption from such registration is available.

6. The Purchaser is able to bear the economic risk of the investment represented by its purchase of the Certificates, including the risk that the facility financed out of the proceeds of the Certificates may not generate sufficient revenues to enable the County to pay the amounts evidenced by the Certificates.

7. The Purchaser is acquiring the Certificates for its own account for investment and not with a view to dividing its participation with others or with a view to, or for resale in connection with, a "distribution" (as that term is used in the Securities Act of 1933, as amended, and rules and regulations of the Securities and Exchange Commission promulgated thereunder) of all or any portion thereof. The Purchaser has no present intention of selling, negotiating or otherwise disposing of the Certificates or any participation therein, subject nevertheless to the condition that the disposition of the Certificates or any participation therein by the Purchaser shall at all times be under the Purchaser's control.

8. The Purchaser shall not assign or offer the Certificates, or any participation therein, for sale without complying with all applicable securities laws and the restrictions on transfer, sale or other disposition described in the official statement referred to above.

Very truly yours,

[PURCHASER]

By \_\_\_\_\_

**APPENDIX A**

**THE MANAGEMENT AGREEMENT**

OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT

FOR A

THREE HUNDRED (300) BED DETENTION FACILITY

BY AND BETWEEN

THE COUNTY OF NEWTON, TEXAS

AND

TEXAS DETENTION MANAGEMENT, INC.

Dated as of June 15, 1990

OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT  
FOR A  
THREE HUNDRED (300) BED DETENTION FACILITY

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OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT  
FOR A  
THREE HUNDRED (300) BED DETENTION FACILITY

THIS OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT for a Three Hundred (300) Bed Detention Facility (the "Agreement") is made and entered into as of the 15th day of June, 1990, by and between the County of Newton, Texas (the "County"), a political subdivision of the State of Texas, and Texas Detention Management, Inc., a Texas corporation, d/b/a Newton County Detention Center ("TDM").

R E C I T A L S

WHEREAS, the County is a political subdivision of the State of Texas governed by a duly elected Commissioners Court;

WHEREAS, Subchapter F of Chapter 351 of the Texas Local Government Code grants authority for the County to enter into contracts with private vendors to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp or related facility;

WHEREAS, the County issued a Request for Proposals from private vendors by public notice on or about February 15, 1990;

WHEREAS, TDM has submitted a Proposal to the County offering to provide for the operation, maintenance and management of a three hundred (300) bed detention facility to be located in Newton County, Texas (the "Facility");

WHEREAS, the County and TDM desire to enter into this Agreement pursuant to which TDM shall provide for the operation, maintenance and management of the Facility; and

WHEREAS, the County and Diversified Municipal Services of Texas, Inc. ("DMS" or the "Lessor") have entered into that certain Lease Agreement dated as of June 15, 1990 by and between the County and DMS (the "Lease Agreement"), pursuant to which DMS has agreed to construct or cause to be constructed the Facility which is to be located in Newton County, Texas;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and subject to the conditions hereinafter set forth, the County and TDM hereby agree as follows:



ARTICLE I

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 1.01. Representations, Covenants and Warranties of the County.

The County represents, covenants and warrants as follows:

(a) The County is a duly formed and validly existing political subdivision of the State of Texas, and is governed by laws of the State of Texas.

(b) The laws of the State of Texas authorize the County to establish, acquire, construct, operate and maintain the Facility; to enter into this Agreement and the transactions contemplated hereby; and to carry out its obligations under this Agreement.

(c) The officers of the County executing this Agreement have been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of the County's governing body or by other appropriate official action.

(d) The County has complied with all open meeting laws, all public contracting laws and all other state and federal laws applicable to this Agreement.

(e) Except as provided in Section 4.09, the County will not amend or modify the terms of this Agreement or enter into a new management contract with TDM or any other entity without first having received the opinion of independent counsel that (i) the proposed amendment or modification of this Agreement or entering into the new management contract will not cause the Lease Agreement or the Certificates of Participation in the rental payments due under the Lease Agreement to constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"); and (ii) the terms of this Agreement as so amended or modified or of such new management contract will comply with the conditions set forth in Revenue Procedure 82-14, 1982-1 C.B. 459, as modified by Conference Report No. 99-841, 1986-3 C.B. 698 (Vol. 4), as each may be modified or superseded. The independent counsel's opinion shall be provided to the Trustee (as defined in section 4.01 hereof), the County and DMS.

(f) The Facility is required by the County to house inmates detained or incarcerated by the County or the State of Texas or political subdivisions thereof; the County further represents and warrants that it will not detain or incarcerate or accept for incarceration in the Facility any prisoners other than those

detained or incarcerated by the County or the State of Texas or political subdivisions thereof and federal prisoners who are awaiting transfer to other facilities or other disposition under applicable federal law and such other prisoners, if any, to the extent permitted by state law as defined in and supported by an opinion of qualified counsel requested and received by the County. Prior to accepting federal prisoners or any other prisoners from sources outside of the State of Texas, the County will accept prisoners, if any, submitted for detention by Texas agencies and authorities on reasonable terms and costs to be negotiated between the County and such Texas agencies or authorities.

(g) The County shall diligently process and enter into all lawful and necessary agreements with such prisoner transfer sources as may be necessary to facilitate the receipt and incarceration of eligible nonhigh-risk prisoners in the Facility.

(h) No member of the governing body of the County is now or will be an employee or officer or director of TDM.

**SECTION 1.02. Representations, Covenants and Warranties of TDM.**

TDM represents, covenants and warrants as follows:

(a) TDM is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas; is duly qualified to transact business and hold property in the State of Texas and in every jurisdiction in which the nature of its activities requires it to be so qualified; has full and complete power to enter into this Agreement and to enter into and carry out the transactions contemplated hereby, and to carry out its obligations under this Agreement; and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof nor the consummation of the transactions contemplated hereby conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which TDM is now a party or by which TDM or its property is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of TDM.

(c) No officer or member of the Board of Directors of TDM is now or will be an employee or member of the governing body of the County.

(d) Except as provided in Section 4.09, if TDM desires to amend or modify the terms of this Agreement or if, upon the expiration of this Agreement, TDM desires to enter into a new management contract with the County, the terms of this Agreement as modified or amended or of such new management contract will

comply with the conditions set forth in Revenue Procedure 82-14, 1982-1 C.B. 459, as modified by Conference Report No. 99-841, 1986-3 C.B. 698 (Vol. 4), as each may be modified or superseded.

(e) The funds necessary to fully operate the facility for three months as identified in the financial statement and written verification of funds on deposit to be furnished by TDM pursuant to Section 2.06 hereof shall be for the sole and exclusive purpose of facilitating TDM's performance of this Agreement. TDM shall not transfer, diminish, or otherwise impair such funds; but rather, TDM shall maintain and keep such funds available for the performance of this Agreement through the first three (3) months of TDM's operation of the Facility.

## ARTICLE II

### DUTIES OF TDM

#### SECTION 2.01. Management, Operation and Maintenance of Facility.

TDM shall manage, operate and maintain the Facility in compliance with minimum standards adopted by the Texas Commission on Jail Standards (the "Commission") and shall receive and retain a Certification of Compliance from the Commission. In connection with the management, operation and maintenance of the Facility, TDM shall provide and pay for:

- (a) Intake facilities and prisoner accounting which shall encompass prisoner intake, recordings, billing, systems of control, identification systems and records, and such other statistical records as may be required by law or are generally accepted prisoner-locator practices;
- (b) Adequate staffing in compliance with applicable federal and state requirements necessary to maintain the requisite level of security maintained within the Facility and sufficient to monitor the activities of the prisoners confined within the Facility;
- (c) Food and beverage services;
- (d) Clothing and uniforms;
- (e) Procurement and purchasing;
- (f) Bookkeeping and financial accounting;

(g) Basic medical care as set forth in greater detail in Article IV;

(h) Training of all personnel to be employed at the Facility;

(i) Recreational activities;

(j) All ordinary repair, upkeep and maintenance required for the Facility; and

(k) All other ordinary operating expenses, except ad valorem taxes and hazard insurance on the Facility.

SECTION 2.02. Independent Contractor.

TDM is and shall be an independent contractor, and subject to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties and obligations under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer - employee or principal - agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities, and obligations of TDM or any other party. TDM shall be solely responsible for (and the County shall not have obligation with respect to) the interviewing, hiring, training, assignment, control, management, compensation, promotion, or termination of TDM's employees which constitute the Facility's administration and staff. However, such activities of TDM shall be subject to regular, on-site monitoring by the Newton County Sheriff (the "Sheriff") and TDM shall furnish reports on such matters to the Sheriff when so requested.

SECTION 2.03. Acceptance of Prisoners.

Except as provided in Section 4.09 and subject to the provisions of Sections 3.03 and 3.04, TDM shall accept and properly incarcerate all nonhigh-risk prisoners assigned by the County to the Facility for whom there is space available at the Facility within the statutory and regulatory limits of the Facility. High-risk prisoners are defined in this Agreement to mean and be the same as high-risk inmates as defined by the Commission. The Commission defines "high-risk" inmates as those persons who cannot be allowed to mingle physically with other inmates without direct supervision, normally because of assaultive and aggressive behavior or high escape risk.

SECTION 2.04. Certification of Facility.

TDM shall obtain, and thereafter maintain, certification of compliance from the Commission as well as any other certification(s) necessary to incarcerate at the Facility nonhigh-risk prisoners of whatever source, whether local, state, federal, or, to the extent allowed by state laws, out-of-state.

SECTION 2.05. Subcontractors.

The County acknowledges and agrees that TDM may subcontract any portion of the operation, maintenance or management services to be performed hereunder, but shall not thereby be relieved of any of its obligations set forth herein. TDM shall bind each subcontractor to the terms hereof as far as applicable to such subcontractor's work, and shall require that each subcontractor perform its work in conformance with the terms and conditions of this Agreement. In the event TDM subcontracts as provided for in this paragraph, then any such subcontractor shall be subject to the provisions of insurance pursuant to Section 9.01 hereof and indemnification pursuant to Section 10.01 hereof.

SECTION 2.06. Verification of Financial Responsibility.

The County hereby agrees to furnish TDM with written notice of commencement of construction of the Facility and said written notice shall contain the scheduled date of completion of construction of the Facility. TDM covenants and agrees that six (6) months prior to the scheduled date of completion of construction of the Facility, TDM shall furnish suitable information to the County to demonstrate the financial capability and intent of TDM to perform the obligations it has assumed under this Agreement specifically including but not limited to a showing by bank deposits or other means acceptable to County in their sole discretion that TDM has within its custody and control sufficient unencumbered funds committed to pay in advance 3 months operations expenses of the Facility. The information to be furnished by TDM to the County shall consist of: (a) a current audited financial statement for TDM prepared and signed by a certified public accountant; and (b) written verification from appropriate financial institutions evidencing the amount of funds on deposit for the account of TDM.

## ARTICLE III

### DUTIES OF THE COUNTY

#### SECTION 3.01. Transfer of Prisoners.

The County hereby covenants and agrees to transfer to the Facility all nonhigh-risk prisoners under the jurisdiction of the County from those prisoner transfer sources set forth below in excess of the maximum certified incarceration limit of the existing Newton County Jail. The County further covenants and assures TDM that all incarceration agreements between the County and the below-listed prison transfer sources contain provisions allowing for such transfer of nonhigh-risk prisoners to the Facility. Possible prison transfer sources include, but are not limited to, the following:

- (a) The County Sheriff of Newton County;
- (b) The County Sheriff of any other Texas county pursuant to an interlocal cooperation contract with the County;
- (c) The Texas Department of Criminal Justice ("TDCJ") pursuant to an agreement between the County and the TDCJ;
- (d) Subject to the limitations set forth herein including, but not limited to, Section 1.01(f), any other state (including the District of Columbia) or political subdivision thereof which may lawfully assign prisoners to the County and from whom the County has contracted to accept prisoners; and
- (e) Subject to the limitations set forth herein including, but not limited to, Section 1.01(f), and the limitations set forth in the Lease Agreement, the United States Government or any department or agency thereof, pursuant to an agreement between such governmental entity and the County.

#### SECTION 3.02. Newton County Jail Prisoners.

The County and the Sheriff shall be solely responsible for the housing, care and control of prisoners incarcerated in the existing Newton County Jail.

#### SECTION 3.03. Designation and Transfer of Prisoners.

Prior to transfer of any prisoner to the Facility, the designation of such prisoner as a "nonhigh-risk prisoner" shall be as agreed by TDM and the Sheriff and such designation shall be made in accordance with the classification plan approved by the Commission for the Facility, as well as applicable state law,

rules and regulations and the procedures and standards promulgated by the Commission. Only those prisoners designated by agreement as being nonhigh-risk shall be transferred by the County to the Facility. The County and the Sheriff shall be solely responsible for all transportation, security, and other requirements of whatever nature related to the transfer of prisoners to and from the Facility.

SECTION 3.04. Reclassification and Reassignment of Prisoners.

If at any time TDM finds that the capacity of the Facility, the demonstrated behavior of any prisoner or group of prisoners, or the mix of prisoners incarcerated in the Facility requires or warrants reassignment or reclassification of any prisoners, TDM will notify the Sheriff and make a reasonable recommendation concerning reassignment and/or reclassification of said prisoner or prisoners. The County, through its designated representatives, shall assist and cooperate with TDM in the transfer of said prisoner or prisoners to the appropriate responsible party. This determination shall be made by TDM in accordance with applicable state law and the rules and procedures promulgated by the Commission.

SECTION 3.05. Communication and Cooperation.

The County and the Sheriff shall cooperate with TDM in all matters of law enforcement, security and communications. The County and the Sheriff shall assist TDM, at the request of TDM, in the training, at TDM's expense, of TDM's employees hired to operate the Facility. The Sheriff shall assist and cooperate with TDM for purposes of obtaining such licensing as may be required by state or federal law for the aforementioned TDM employees. The County and the Sheriff shall assist and cooperate with TDM in providing information needed by TDM in the screening of candidates for employment to the extent such information may be lawfully obtained or released under federal or state law. The County and the Sheriff will verify that all TDM employees undertaking jailor duties are certified as required by the Commission.

SECTION 3.06. Maximum Utilization of Facility.

The County and TDM agree it shall be to their mutual benefit and interest for the Facility to be fully utilized by maintaining the maximum prisoner population within statutory and regulatory limits. To achieve this end, and throughout the term of this Agreement, TDM agrees to use its best efforts, at no cost to the County, to engage in marketing activities for the Facility, to take all reasonable actions which may be necessary to identify and locate potential prisoner transfer sources, and with the approval of the County and the Sheriff, to negotiate contracts on

behalf of the County and/or the Sheriff for receipt of eligible prisoners. The County understands and agrees that the actions to be performed by TDM to seek maximum utilization of the Facility are not intended by TDM and should not be construed by the County as any type of warranty or guarantee by TDM that its best efforts will result in any specified level of utilization of the Facility or in any specified amount of prisoner population being incarcerated at the Facility.

SECTION 3.07. Prisoner Escape.

In the event a prisoner confined to the Facility escapes from the Facility, TDM will immediately notify appropriate public law enforcement officers, including the Sheriff. The public officers so notified will be solely responsible for the capture and return of the escaped prisoner.

ARTICLE IV

DISBURSEMENT OF FACILITY REVENUE  
AND TDM'S COMPENSATION

SECTION 4.01. Receipt and Payment of Facility Revenues.

For the purpose of this Agreement, the term "Facility Revenues" shall mean all receipts of the County, from any sources whatsoever, arising from operation of the Facility including, without limitation, payments received for the incarceration, detention or housing of prisoners, including any fees owed or paid by the County for the housing of County Prisoners, as defined in Section 4.02, in the Facility. Each calendar month the County shall transfer within three (3) Business Days after receipt (or after the due date in the case of fees to be paid for County Prisoners) the first \$106,000 of Facility Revenues received by the County in such month to the Trustee (as defined below) for deposit into a special account designated as the Newton County Detention Facility Revenue Account (the "Revenue Account") which shall be administered by NCNB Texas National Bank, a national banking association, as trustee (the "Trustee"), pursuant to that certain Trust Agreement Relating to a Detention Facility Acquisition Project dated as of June 15, 1990, by and among the County, DMS and the Trustee (the "Trust Agreement"). The County shall also transfer to the Trustee from Facility Revenues any other amounts due under the Lease when notified by the Trustee or DMS. The term "Facility Revenues" as used in this Agreement shall have the same meaning and be the same as the term "Project Revenues" contained in the Trust Agreement.



SECTION 4.02. Fee for County Prisoners.

For the purpose of this Agreement, the term "County Prisoner" shall mean all nonhigh-risk prisoners assigned and transferred to the Facility by the Sheriff other than those nonhigh-risk prisoners received and incarcerated by the County pursuant to Incarceration Agreements with the Prisoner Transfer Sources set forth in Section 3.01(b)-(e) hereof and any other Prisoner Transfer Sources not now specifically set forth in Section 3.01. For each County Prisoner transferred to the Facility by the Sheriff, the County shall be obligated to pay a "per diem rate" per County Prisoner for each prisoner day a County Prisoner is assigned to the Facility. On or before the tenth (10th) calendar day of each month, the County shall transfer to the Trustee for deposit into the Revenue Account, an aggregate amount consisting of the total per diem rate due for the total prisoner days of County Prisoners incarcerated in the Facility during the preceding month; provided, however, that the total amount of Facility Revenues transferred to the Trustee shall not exceed the amount to be transferred under Section 4.01 hereof, the Lease Agreement and the Trust Agreement. The per diem rate to be paid by the County for County Prisoners is to be an amount equal to the lowest per diem rate charged by the County to a Prisoner Transfer Source described in Section 3.01(b)-(e) hereof and any other Prisoner Transfer Sources not now specifically set forth in Section 3.01 for prisoners assigned to the Facility during the preceding month; but in no event shall the per diem rate the County is obligated to pay be less than \$35.00 per County Prisoner per prisoner day or any greater than \$50.00 per County Prisoner per prisoner day. The full per diem amount computed under this Section 4.02 shall be considered as Facility Revenues regardless of the amount of such per diem amount transferred to the Trustee.

SECTION 4.03. Payment of Management Fees.

(a) TDM shall be entitled to receive from the County the following amounts: (i) reimbursement of costs and expenses pursuant to Section 4.06 and Section 5.02 hereof; (ii) the Fixed Monthly Fee pursuant to Section 4.04; (iii) the Gross Revenue Fee pursuant to Section 4.05; and (iv) the additional fees, if any, provided pursuant to an amendment pursuant to Section 4.09.

(b) Each month TDM shall prepare and send an invoice to the County for the fees due TDM for the immediately preceding month and shall include in such invoice the amounts of Facility Revenues that the County shall be entitled to receive. The form of the invoice shall be substantially in the form attached hereto as Exhibit "A" or as otherwise mutually agreeable between the County and TDM. All amounts payable to TDM and all amounts to be

retained by the County shall be computed on a monthly basis. The Available Amount for a month shall equal Facility Revenues accrued for such month, less the amounts transferred by the County to the Trustee under the Lease Agreement during such month, plus the amounts returned by the Trustee to the County during such month. The payment of the fees to TDM and the amounts to be retained by the County (A) shall be made and retained, respectively, as Facility Revenues are collected and amounts returned from the Trustee are received, (B) shall be made and retained in the order in which they accrued, and (C) as to amounts accrued for each month, shall be made to TDM and retained by the County in the following order of priority:

- (i) first, to TDM for reimbursable costs and expenses described in Section 4.06 and 5.02 for such month;
- (ii) second, to TDM for the Fixed Monthly Fee and the fixed portion of any fee payable to TDM pursuant to Section 4.09 for such month;
- (iii) third, by the County for the Fixed Amount for such month pursuant to Section 4.06;
- (iv) fourth, to TDM for the Gross Revenue Fee, if any, and the non-fixed portion of any fee payable to TDM pursuant to Section 4.09 for such month; and
- (v) fifth, by the County in an amount, if any, equal to the Available Amount for such month less the amounts described in (i), (ii), (iii) and (iv) above for such month.

Amounts payable to TDM shall be paid by the County within three (3) business days after the County collects any Facility Revenues (or after the due date in the case of fees to be paid for County Prisoners) or receives amounts transferred from the Trustee until all amounts due TDM are paid in full. The provisions of Section 4.08 shall apply to all such payments.

SECTION 4.04. TDM Fixed Monthly Fee.

During the term of this Agreement, the County shall pay TDM a fixed monthly fee of \$206,875.00 (the "Fixed Monthly Fee").

SECTION 4.05. TDM Gross Revenue Fee.

During the term of this Agreement and subject to the availability of Facility Revenues pursuant to Section 4.03 of this Agreement, the County shall pay to TDM, in addition to the Fixed Monthly Fee, for each month an additional fee (the "Gross Revenue

Fee") that shall equal ninety percent (90%) of the following (but not less than zero): the Available Amount for such month less the amounts described in Sections 4.03(b)(i) through (iii) for such month. Notwithstanding anything contained in this Agreement to the contrary, the maximum Gross Revenue Fee paid to TDM by the County for any month shall not exceed the Fixed Monthly Fee of \$206,875.00.

SECTION 4.06. Calculation of County Fixed Amount.

During the term of this Agreement and subject to the availability of Facility Revenues pursuant to Section 4.03 of this Agreement, the County shall receive and retain an aggregate amount each month (the "Fixed Amount") consisting of a Daily Amount to be paid for each prisoner (not including County Prisoners) for each prisoner day such prisoner was assigned to and incarcerated in the Facility during the preceding month. For purposes of this Section 4.06, the Daily Amount for each prisoner for each prisoner day shall be as follows:

(a) During the period from the commencement of operations at the Facility through December 31, 1991, the Daily Amount shall equal \$1.25;

(b) During the first full calendar year beginning on January 1, 1992, the Daily Amount shall equal \$2.62; and

(c) For all subsequent periods during the term of this Agreement, the Daily Amount shall equal \$2.62 per day;

provided, however, that if TDM has advanced funds for the purchase of hazard insurance on the Facility for the first year of its existence, then the County hereby agrees to reimburse TDM for this expense out of its Fixed Amount in twelve equal monthly installments.

SECTION 4.07. Calculation of Prisoner Days.

For the purposes of this Agreement, a "prisoner day" shall mean a twenty-four (24) hour time period beginning with twelve (12) o'clock midnight and ending twenty-four (24) hours later. A prisoner assigned to the Facility for any portion of a day shall be deemed to be included in that day's prisoner population for purposes of calculating the amounts payable pursuant to this Agreement.

SECTION 4.08. Obligation of Specific Performance.

In the event a dispute arises between the County and TDM regarding this Agreement or any of the provisions hereof, the

County and TDM shall be required to continue performance of their respective obligations during the pendency of any such dispute. The County shall continue to make all transfers to the Trustee, payments to TDM and any other actions required hereunder in a timely manner as set forth in this Agreement, the Lease Agreement and the Trust Agreement. Likewise, TDM shall continue to perform its obligations in accordance with the terms of this Agreement notwithstanding the existence of any dispute between the parties. Both the County and TDM shall have the right to compel specific performance by the other party of its respective contractual obligations and to institute any legal action necessary to compel such specific performance. The obligation of either party to perform its respective obligations hereunder may only be terminated as provided for in Article VIII of this Agreement or applicable law.

SECTION 4.09. Special Prisoner Reimbursements; Separate Agreements.

(a) The County and TDM each hereby agree and acknowledge that the fee structure contained in this Agreement was based upon the understanding that the Facility would not be used to house prisoners requiring special services or facilities. Notwithstanding the foregoing, in the event the County enters into an incarceration agreement with a Prisoner Transfer Source for the assignment to the Facility of prisoners with mental or physical handicaps or disabilities or prisoners needing special services or facilities, including but not limited to vocational training or drug or alcohol rehabilitation programs (such prisoners being referred to herein as "Special Prisoners"), with such mental or physical handicaps or disabilities or training or rehabilitation programs, services or facilities being expressly recognized in said incarceration agreement(s), this Agreement shall not be amended if the per diem amount charged to house such Special Prisoners in the Facility is less than or equal to \$60.00 per day per prisoner. If, however, because of the special services or facilities required for the housing of Special Prisoners the per diem amount with respect to such prisoners exceeds \$60.00 per day per prisoner, then this Agreement shall be amended to provide for the allocation between the County and TDM the excess of such per diem amount over \$60.00 per day. If an amendment is required to modify the fee structure provided in this Agreement pursuant to the foregoing, an opinion of special counsel shall not be required if the amendment does not affect the term of this Agreement, provides only for the provision of special services or facilities and the allocation of fees received with respect thereto, and after the amendment, at least 50% of TDM's compensation is to be paid on a periodic, fixed fee basis and no amount of TDM's compensation is based on a share of net profits. Notwithstanding anything contained herein to the contrary, the

County shall seek and obtain the prior approval of TDM before the County enters into an incarceration agreement with a Prisoner Transfer Source for assignment of any Special Prisoners to the Facility.

(b) To the extent specifically authorized by assignors of prisoners housed in the Facility, TDM may make separate and independent agreements with any agency or organization for the education or training of prisoners so long as such agency or organization has the legal right, capacity and authority to enter into a contract with TDM for the education or training of such prisoners. The reimbursement of costs or fees for these additional services shall be payable directly to TDM by the appropriate assignor of the prisoners being educated or trained. The County shall be provided by TDM, free of cost, copies of all such contracts or agreements. Said contracts shall be separate and independent of this Agreement and shall not constitute obligations of any type on behalf of the County; except insofar as the County is the responsible assignor of prisoners who are educated or trained pursuant to such contracts. Notwithstanding anything contained in the previous sentence to the contrary, TDM hereby agrees that all such separate contracts will comply with the conditions set forth in Revenue Procedure 82-14, 1982-1 C.B. 459, as modified by Conference Report No. 99-841, 1986-3 C.B. 698 (Vol. 4), as each may be modified or superseded.

SECTION 4.10. Annual Appropriation by County.

Notwithstanding anything contained in this Article IV to the contrary, the County's obligation to pay compensation to TDM pursuant to the provisions of this Article IV is subject to and conditioned upon the annual appropriation of funds, including Facility Revenues, by the County for such purpose.

ARTICLE V

MEDICAL CARE

SECTION 5.01. Basic Medical Care.

Basic medical care will be provided by TDM at TDM's expense to all prisoners detained at the Facility. This shall be limited to any condition which can be "self-treated" by the prisoners or which may be treated by a lay technician acting under guidelines provided by a medical doctor, including first aid for emergencies. This shall also include the dispensing of "over-the-counter" type medications which have been approved for inventory by the medical consultant to the Facility.

SECTION 5.02. Other Medical Care.

The cost of hospitalization, prescription drugs, surgical and dental care (and transportation to obtain such care) for a prisoner shall be the obligation of the jurisdiction from which the prisoner was assigned to the Facility.

ARTICLE VI

COMPLIANCE WITH STANDARDS

SECTION 6.01. Procedures Manual.

TDM shall prepare and adopt a procedures manual for the operation of the Facility so as to assure that the Facility is operated in compliance with applicable state law, and any other applicable law, and those rules and procedures promulgated by the Commission. TDM shall make such modifications and corrections in said procedures manual as are necessary to keep the Facility in compliance with state law, other applicable law, and the rules and procedures promulgated by the Commission.

SECTION 6.02. Training of Employees.

TDM, at its sole cost and expense with such assistance and cooperation as may be reasonably necessary of the County and the Sheriff as requested by TDM, shall ensure that all employees at the Facility are adequately trained to perform at the requisite levels and standards required by state law, other applicable law, and the rules and procedures promulgated by the Commission.

SECTION 6.03. Employee Healthcare Benefits

TDM shall, at a minimum, provide healthcare benefits for its employees that are comparable to those healthcare benefits provided by the County to the County's employees.

ARTICLE VII

TERM OF AGREEMENT

SECTION 7.01. Initial Term.

Subject to Section 12.14, this Agreement shall be effective from the date it is made and entered into by the parties hereto. The initial term of this Agreement shall be for a period of three (3) years, commencing from the date upon which the Facility is certified by the Commission to receive prisoners.

SECTION 7.02. Renewal Options.

Upon the expiration of the Agreement's initial term, the Agreement may be extended thereafter for two (2) one-year renewal option periods upon the mutual agreement of the County and TDM. Either party intending not to renew the Agreement beyond the initial term or beyond the first committed renewal option period shall provide written notice of such intent not to renew to the other party at least 180 days prior to the end of the applicable initial term or renewal option period. If neither party furnishes the other party with said notice of intent not to renew, then under the terms of this Agreement, the parties will be deemed to have agreed to extend the term of this Agreement by an additional one-year renewal option period. In any event, this Agreement shall terminate upon the expiration of the second one-year option renewal period.

ARTICLE VIII

TERMINATION

SECTION 8.01. Termination by County.

The County shall have the right to terminate this Agreement only in the event of TDM's failure to operate, maintain or manage the Facility in compliance with the terms of this Agreement and applicable state law and in accordance with the rules and procedures promulgated by the Commission. However, prior to the exercise of its right to terminate this Agreement, the County shall give TDM written notice setting forth in detail all matters of alleged noncompliance and TDM shall have a reasonable period of time after receipt of said notice, based upon the circumstances of the situation and in ordinary circumstances within 90 days, within which to correct all matters of noncompliance set forth in the required notice.

SECTION 8.02. Payment Upon Termination.

In the event this Agreement is terminated by the County or TDM, TDM shall be entitled to receive payment in accordance with the provisions of Article IV of this Agreement for the prisoners incarcerated in the Facility for the total number of prisoner days furnished at the Facility by TDM up to and including the date of termination.

SECTION 8.03. Bankruptcy of TDM.

In the event of the filing of a petition in bankruptcy, by or against TDM, and if instituted against TDM, if consented to or

acquiesced in by TDM, or if said petition in bankruptcy is not dismissed within sixty (60) days after the filing of same, the County shall have the right to terminate this Agreement upon the same terms and conditions set forth in Sections 8.01 and 8.02. If the County terminates this Agreement due to TDM's bankruptcy, then the County shall be entitled to immediately take over and assume the operation, maintenance and management of the Facility or immediately contract with a replacement contractor for such services for the Facility.

SECTION 8.04. Termination for Nonpayment of Funds.

The payment of money by the County under any provisions hereof is contingent upon the receipt of Facility Revenues for prisoners assigned to the Facility, including the availability of additional funds appropriated by the County (if any) to cover the provisions hereof. Neither the County, nor its elected officials, officers, employees, agents, attorneys, or other individuals acting on behalf of the County, make any representations or warranty as to whether any appropriation will, from time to time during the initial term or any extension hereof, be made by the County to cover the provisions hereof. Likewise, neither the County, nor its elected officials, officers, employees, agents, attorneys, or other individuals acting on behalf of the County, make any representations or warranty as to the sufficiency or amount of Facility Revenues (if any) the County may be able to receive from potential Prisoner Transfer Sources pursuant to incarceration agreements for prisoners to be assigned to the Facility. In the event funds for this agreement become unavailable due to nonappropriation or insufficiency of Facility Revenues, or in the event the County fails to make payment to TDM for whatever reason, so that TDM fails to receive, as a minimum monthly payment, its Fixed Monthly Fee for a period of ninety (90) consecutive days, then TDM shall have the right to terminate this Agreement and receive payment upon termination in accordance with the provisions of Section 8.02 of this Agreement payable from legally available funds.

SECTION 8.05. Termination Due to Certain Changes in Circumstances.

In the event that changes in laws, government regulations, court orders or the minimum standards of the Commission in effect as of the date of this Agreement cause an increase, on an annual basis, in the cost of operating, managing, and maintaining the Facility of an amount in excess of \$120,000.00 over the average annualized operating costs for the first three (3) month period during which occupancy of the Facility exceeds ninety percent (90%), then TDM shall have the right, upon ninety (90) days prior written notice to the County, to terminate this Agreement and



receive payment upon termination as set forth in Section 8.02 of this Agreement. TDM shall provide the County with such documentation of such increased costs as the County may reasonably request.

SECTION 8.06. Termination by Trustee.

The County and TDM hereby agree that upon an event of default by the County under the Lease Agreement resulting in the Trustee acquiring title to the Facility, the Trustee may terminate this Agreement by providing notice to the County and TDM in accordance with Section 12.12 hereof.

ARTICLE IX

INSURANCE

SECTION 9.01. Liability Insurance.

During the term of this Agreement, TDM shall obtain and maintain in force, at its sole cost, risk and expense, an adequate plan of insurance sufficient to protect TDM, the County and the Sheriff, its officers, guards, employees, subcontractors, and agents against all claims, including claims based on violations of civil rights, arising from the services to be performed by TDM under this Agreement and to protect the County and the Sheriff from actions by a third party against TDM, its officers, guards, employees, and agents as a result of this Agreement. At a minimum, TDM shall obtain and maintain in force a policy or policies of liability insurance in an aggregate amount of no less than \$1 million (\$1,000,000) in coverage for any single claim thereunder. Such insurance shall insure against all claims, including claims based upon violations of civil rights arising from services performed by TDM pursuant to this Agreement.

SECTION 9.02. Additional Insureds.

The policy or policies of insurance to be obtained and maintained by TDM under the provisions of Section 9.01 of this Agreement shall name the County and its employees, the County Judge of the County, the County Commissioners of the County, and the Sheriff as additional insureds.

SECTION 9.03. Proof of Insurance.

TDM shall provide to the County a certificate or certificates of insurance as proof of the implementation of an adequate plan of insurance to demonstrate the required insurance policies have been obtained and are being maintained in accordance with Section 9.01. If, through no fault of TDM, such insurance

policies are cancelled or endorsed in such a way as to limit the insurance coverage provided thereunder, TDM shall provide the County written notice thereof immediately, and TDM shall obtain, as soon as possible, and at its own cost, adequate replacement insurance policies that are commercially available.

## ARTICLE X

### INDEMNIFICATION

#### SECTION 10.01. Indemnification Obligations of TDM.

TDM agrees and does hereby assume any and all liability for all claims arising from the services performed by TDM or its subcontractors under this Agreement. TDM further agrees to and does hereby defend, hold harmless and indemnify the County, its officers, directors, employees, agents and representatives (including, but not limited to, the County Judge, the County Commissioners, and the Sheriff), from and against all claims, damages, losses, costs and expenses, including attorneys' fees incurred or suffered by the County, its officers, directors, employees, agents or representatives, arising out of or resulting from any negligent or wrongful act or failure to act by TDM or its subcontractors pursuant to the provisions of this Agreement, including all claims arising from the services performed under this Agreement by TDM.

## ARTICLE XI

### APPROVAL AND MONITORING BY COUNTY SHERIFF

#### SECTION 11.01. Approval of Sheriff.

The Sheriff has executed this Agreement in the space provided herein to evidence his written approval of this Agreement as required by Section 351.102 of the Texas Local Government Code.

#### SECTION 11.02. Approval of Conditions of Confinement.

Within two months of the scheduled date of completion of the Facility, TDM shall provide the County and the Sheriff with written comprehensive standards for conditions of confinement. The Sheriff shall review and approve the comprehensive standards for conditions of confinement to be developed and implemented by TDM for the operation, management and maintenance of the Facility. The acceptance and approval of said written standards are an express condition precedent to the County's obligations under

this Agreement. Said standards shall be incorporated as an addendum to this Agreement in compliance with Section 351.103 of the Local Government Code.

SECTION 11.03. Monitoring by Sheriff.

The Sheriff shall regularly monitor TDM's operation of the Facility. The Sheriff or his written designated representative shall conduct a thorough on-site inspection of the Facility no less than twice each month throughout the term of this Agreement.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01. Disadvantaged Businesses and Local Hiring Preferences.

TDM shall use its best efforts to identify and utilize disadvantaged businesses, as defined in Section 351.1035 of the Texas Local Government Code, as subcontractors that may provide or have the potential to provide supplies, materials, services, and equipment to TDM for performance of this Agreement. TDM shall use its best efforts to hire local personnel as employees for the Facility. Additionally, TDM shall use its best efforts to purchase local goods and services in connection with the operation, maintenance, and management of the Facility. TDM shall also encourage its subcontractors to similarly utilize disadvantaged businesses, hire local personnel and purchase goods and services locally.

SECTION 12.02. Nondiscrimination.

TDM shall at all times provide the services required hereunder in compliance with all laws with respect to nondiscrimination in hiring, promotion or pay of employees. No person will be subjected to discrimination on the grounds of race, color, religious or national origin.

SECTION 12.03. Binding Nature.

This Agreement shall not be binding upon the parties until it is approved and executed by both parties. This Agreement, after properly approved and executed by the parties, shall inure to the benefit of the County and TDM and shall be binding upon the County and TDM and their respective successors and assigns.

SECTION 12.04. Invalidity and Severability.

In the event that any provision of this Agreement shall be held invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby. The parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

SECTION 12.05. Terminology and Definitions.

All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

SECTION 12.06. Arbitration.

Upon the mutual agreement in writing, the parties may submit any matter in dispute between the parties to binding arbitration.

SECTION 12.07. Laws of Texas.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION 12.08. Jurisdiction.

This Agreement shall be deemed performable in Newton County, Texas. Any and all suits for any and every breach of this Agreement shall be instituted and maintained in any court of competent jurisdiction in Newton County, Texas.

SECTION 12.09. Entire Agreement.

This Agreement incorporates all of the agreements, covenants and understandings between the parties hereto, concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

SECTION 12.10. Amendment.

No changes to this Agreement shall be made except upon written agreement of both parties. Within five calendar days of any

modification or amendment of this Agreement, the County shall furnish the Trustee with a copy of such newly amended or modified Agreement.

SECTION 12.11. Confidentiality.

To the extent allowed by applicable state and federal laws, any confidential information provided to or developed by TDM in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by TDM or the County without prior written approval of the other party.

SECTION 12.12. Notices.

All notices called for or contemplated hereunder shall be in writing and shall be valid when actually received by the party to whom such notice is given if sent via a private courier or by means other than the United States mail, or when deposited in the United States Mail, postage pre-paid, and addressed to the party as herein specified below:

- (a) Notices to the County shall be delivered or sent as follows:

The Honorable Lee Roy Fillyaw  
County Judge  
P. O. Box J  
Newton, Texas 75966

- (b) Notices to TDM shall be delivered or sent as follows:

Texas Detention Management  
4120 Southwest Freeway, Suite 111  
Houston, Texas 77027

SECTION 12.13. Headings.

The headings used herein are for convenience of reference only and shall not constitute a part hereof or effect the construction or interpretation of this Agreement.

SECTION 12.14. Condition to Effectiveness.

The effectiveness of this Agreement is subject to the construction of the Facility and certification thereof by the Commission to receive prisoners.

SECTION 12.15. Execution Authority.

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

SECTION 12.16. Execution in Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

NEWTON COUNTY, TEXAS

TEXAS DETENTION MANAGEMENT, INC.

By: \_\_\_\_\_  
Lee Roy Fillyaw,  
County Judge

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Wayne Powell,  
County Sheriff

By: \_\_\_\_\_  
Melba Canty,  
County Clerk

(COUNTY SEAL)

182:D891110H.00  
071790tddl  
H0418 52250 NEWT

Exhibit "A"

Invoice for Services Rendered  
by Texas Detention Management, Inc.  
at the Newton County Detention Facility

Date: \_\_\_\_\_  
For the Month of \_\_\_\_\_, 19\_\_\_\_

Sources of Income

Facility Revenues

[Detail]	\$ _____
Less: Amount transferred by County to NCNB Texas National Bank, Trustee under the Lease Agreement	_____
Add: Return of amounts from Trustee	_____
TOTAL	\$ _____

TDM Fees and County Retainage

(To be paid from available cash in the  
following priority)

1. Reimbursable costs and expenses payable to TDM (Sections 4.06 and 5.02)*	\$ _____
2. Fixed Monthly Fee payable to TDM (Section 4.04)*	206,875.00
3. Fixed portion of any fee payable to TDM pursuant to Section 4.09*	_____
4. Fixed Amount payable to County (Section 4.06)*	_____
5. Gross Revenue Fee payable to TDM, if any (Section 4.05)	_____
6. Non-fixed portion of any fee to TDM payable pursuant to Section 4.09, if any	_____
7. Balance payable to County, if any	_____
TOTAL (Not to be less than total above)*	\$ _____

(Section References are to the Operation, Maintenance and Management Agreement)

\* Items 1-4 are fixed fees and are payable from future sources of income if the current month's sources of income are insufficient.



**APPENDIX B**

**TRUST AGREEMENT**

TRUST AGREEMENT RELATING TO A  
DETENTION FACILITY ACQUISITION PROJECT

by and among

COUNTY OF NEWTON, TEXAS,

DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC.

and

NCNB TEXAS NATIONAL BANK, AS TRUSTEE

Dated as of June 15, 1990

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TRUST AGREEMENT RELATING TO A  
DETENTIONAL FACILITY ACQUISITION PROJECT

THIS TRUST AGREEMENT RELATING TO A DETENTION FACILITY ACQUISITION PROJECT (the "Trust Agreement") is made as of June 15, 1990, by and among the COUNTY OF NEWTON, TEXAS, a political subdivision of the State of Texas (the "Obligor"), DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC., a corporation organized and existing under the laws of the State of Texas (the "Corporation"), and NCNB TEXAS NATIONAL BANK, a national banking association with a corporate trust office in Houston, Texas, as trustee (the "Trustee").

Witnesseth that, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions. Terms defined in the Agreement (as defined below) and capitalized herein shall, for purposes of this Trust Agreement, have the meanings given them in the Agreement unless the context requires otherwise. The terms defined below shall have the meanings given to them.

(a) Agreement. The term "Agreement" means that certain Lease Agreement dated as of even date herewith by and between the Corporation and the Obligor for the leasing and acquisition of the Project.

(b) Agreement Payment or Rental Payment. The terms "Agreement Payment" or "Rental Payment" mean those Rental Payments to be paid by the Obligor under the Agreement.

(c) Agreement Payment Date or Rental Payment Date. The terms "Agreement Payment Date" or "Rental Payment Date" mean any date on which a Rental Payment is due in accordance with the terms of the Agreement.

(d) Authorized Officer. The term "Authorized Officer," when used with respect to the Trustee, means any Executive Vice President, any Senior Vice President, any Vice President, or any trust officer. The term "Authorized Officer," when used with respect to the Corporation, means the President, any Vice President, Secretary, Assistant Secretary or Treasurer of the Corporation or any other officer of the Corporation who is designated in writing by or by resolution of the Board of Directors of the Corporation as an Authorized Officer for purposes of this Trust Agreement.

The term "Authorized Officer," when used with respect to Obligor, means any officer or employee of Obligor who is designated in writing by or by resolution of the governing body of Obligor as an Authorized Officer for purposes of this Trust Agreement.

(e) Business Day. The term "Business Day" means a day on which (i) the office of the Trustee in Houston, Texas or the principal office of any successor to the Trustee is open for the purpose of conducting the business of the Trustee or such successor, and (ii) the New York Stock Exchange is open for trading.

(f) Certificate Payment Date. The term "Certificate Payment Date" means any date upon which payment is due on the Certificates, or if such date is not a Business Day, the first Business Day immediately following, including, without limitation, June 15 and December 15 of each year commencing with December 15, 1990 and terminating on the maturity date of the Certificate.

(g) Certificate Register. The term "Certificate Register" means the register the Trustee is required to maintain pursuant to Article III of this Trust Agreement.

(h) Certificate Year. The term "Certificate Year" means each one-year period during which the Certificates are outstanding beginning on the day after each Issue Anniversary Date, except that the first "Certificate Year" shall be the period beginning on the Issue Date and ending on the first Issue Anniversary Date and the final "Certificate Year" shall end on the Final Rebate Determination Date.

(i) Certificates. The term "Certificates" means the certificates of participation to be issued pursuant to this Trust Agreement.

(j) Code. The term "Code" means the United States Internal Revenue Code of 1986, as amended, and the regulations and Internal Revenue Service rulings and procedures issued thereunder.

(k) Concluding Payment. The term "Concluding Payment" means as to any particular date the amount set forth under the column labeled Concluding Payment on the payment schedule attached as Exhibit "E" to the Agreement corresponding to such date as such amount may be reduced from time to time as a result of a partial redemption of the Certificates in accordance herewith.

(l) Deed of Trust. The term "Deed of Trust" means the Deed of Trust and Security Agreement to Secure Performance



dated as of the date hereof executed by the Corporation to J. Douglas McDade, trustee, which grants a lien on the Project for the benefit of the Trustee.

(m) Event of Default. The term "Event of Default" means those events of default provided for in Section 5.01 of this Trust Agreement.

(n) DMS Lease Assignment Agreement. The term "DMS Lease Assignment Agreement" means the DMS Lease Assignment Agreement and Option to Purchase Relating to a Detention Facility Acquisition Project by and between the Corporation and the Trustee relating to the assignment of all of the Corporation's rights and interests in the Agreement and the agreement to execute the Deed of Trust.

(o) Excess Amount. The term "Excess Amount" is the amount as of an Issue Anniversary Date or Final Rebate Determination Date by which the Tentative Rebate Amount exceeds the net amount theretofore deposited in the Special Rebate Account for the same period for which the Tentative Rebate Amount is computed.

(p) Final Rebate Determination Date. The term "Final Rebate Determination Date" means the date on which the Certificates finally mature by their terms or otherwise or are finally redeemed.

(q) Financed Costs. The term "Financed Costs" means all costs and expenses incurred in relation to the Project including, without limitation, design, planning, engineering, and legal costs; acquisition costs of land, interests in land, rights-of-way and easements; construction costs; costs of machinery, furniture, equipment and other capital assets incident and related to the operation, maintenance and administration of the Project; and financing costs, including interest during construction and thereafter, underwriter's discount and/or fees; and fees and expenses for legal, financial and other professional services.

(r) Gross Proceeds. The term "Gross Proceeds" shall have the meaning given to such term by Section 148.

(s) Issue Anniversary Date. The term "Issue Anniversary Date" means each anniversary of December 15, 1990, except that the first Issue Anniversary Date shall be December 15, 1990.

(t) Issue Date. The term "Issue Date" means the date of delivery of the Certificates in exchange for the proceeds from the sale thereof.

(u) Manager. The term "Manager" shall mean Texas Detention Management, Inc. ("TDM") or any successor to or replacement of TDM which has contracted with the Obligor to operate, maintain and manage the Project.

(v) Management Agreement. The term "Management Agreement" means that certain Operation, Maintenance and Management Agreement for a Three Hundred (300) Bed Detention Facility dated as of June 15, 1990, by and between the Obligor and TDM.

(w) Nonpurpose Investment. The term "Nonpurpose Investment" shall have the meaning given to such term by Section 148.

(x) Original Proceeds. The term "Original Proceeds" when used with respect to the Certificates means (1) the amount received from the sale thereof, and (2) all amounts received from the investment of the amounts described in Clause (1) of this definition.

(y) Outstanding. The term "Outstanding" when used with reference to the Certificates as of any particular date means all Certificates theretofore delivered except: (i) any Certificate cancelled by the Trustee at or before said date; (ii) any Certificate in lieu of or in substitution for which another Certificate shall have been delivered pursuant to this Trust Agreement; and (iii) any Certificates defeased pursuant to Section 8.02 hereof.

(z) Owner. The term "Owner" or "Certificate Owner" or any similar term, when used with respect to the Certificates means the registered owner of any Certificate.

(aa) Permitted Investments. The term "Permitted Investments" means any of the following:

(i) Bonds, bills or interest bearing notes or other direct obligations of the United States;

(ii) Certificates of deposit issued by a nationally or state-chartered bank domiciled in the State of Texas, including the Trustee, provided such deposits are fully insured by the FDIC, or its successor and secured in the manner required by State Laws for investment of county funds; and

(iii) Any other investments authorized by State Laws for investment of county funds.

(ab) Principal Office. The term "Principal Office," when used with respect to Article III hereof relating to the

Trustee, means the corporate trust office of the Trustee currently situated in Houston, Texas.

(ac) Prohibited Payment. The term "Prohibited Payment" means any payment or agreement to pay, to a party other than the United States, an amount that is required to be paid to the United States by entering into a transaction that reduces the amount owed to the United States pursuant to Section 4.06 hereof because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the issue not been relevant to either party.

(ad) Project Revenues. The term "Project Revenues" means all receipts of the Obligor, from any sources whatsoever, arising from operation of the Project including, without limitation, payments received for the incarceration, detention or housing of prisoners, and any fees owed or paid by the Obligor for the housing of Newton County prisoners in the Project.

(ae) Rebatable Amount. The term "Rebatable Amount" means the amount of "rebatable arbitrage" with respect to the Rental Payments made by the Obligor as determined in accordance with temporary section 1.148-2T of the Regulations.

(af) Regulations. The term "Regulations" when used with respect to the Certificates means the temporary or final Income Tax Regulations applicable to the Certificates issued pursuant to section 141 through 150 of the Code or section 103 of the Internal Revenue Code of 1954. Any reference to a Section of the Regulations shall also refer to any successor provision to such Section hereafter promulgated by the Internal Revenue Service pursuant to sections 141 through 150 of the Code and applicable to the Certificates.

(ag) Reserve Requirement. The term "Reserve Requirement" means initially, Nine Hundred Ninety Nine Thousand Dollars (\$999,000), with investment earnings to be accumulated to an amount equal to One Million Four Hundred Thousand Dollars (\$1,400,000), except for the continuing use thereof pursuant to Section 4.04(c) hereof, consisting of amounts on deposit in the Reserve Account and the value of Permitted Investments held in such account.

(ah) Section 148. The term "Section 148" means Section 148 of the Code, and the regulations and revenue rulings and procedures issued thereunder.

(ai) Special Rebate Account. The term "Special Rebate Account" means the account created in subsection 4.06(a) hereof.

(aj) Taxable Investment. The term "Taxable Investment" means any Permitted Investment other than:

(1) Non-AMT Tax-Exempt Obligations: an obligation the interest on which is excluded from the gross income, as defined in section 61 of the Code, of the owners thereof for federal income tax purposes (or, when such obligation was issued, was purported by the evidence of such obligation to be so excluded) and which is not a preference item, as defined in section 57 of the Code,

(2) Tax-Exempt Mutual Fund: stock of a corporation during any quarter of any taxable year thereof in which such corporation and its assets are described in temporary Section 1.148-8T(e)(3)(iii) of the Regulations,

(3) Demand SLGS: one-day certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in Title 31, part 344 of the Code of Federal Regulations, if the Obligor and the Corporation in good faith attempt to comply with all the requirements of such program relating to the investment of Gross Proceeds, and

(4) Exempt Temporary Investments: Permitted Investments which are described as an "exempt temporary investment" in any temporary or final regulations which are hereafter promulgated by the Internal Revenue Service pursuant to section 148 of the Code to implement temporary Section 1.148-8T(e)(4)(iii) of the Regulations and are applicable to the Certificates.

(ak) Tentative Rebate Amount. The term "Tentative Rebate Amount" means (i) the excess, as of a date specific and with reference to the Certificates, of (A) the aggregate amount earned from the Issue Date, in the case of a determination date before the end of the fifth Certificate Year, and from the end of the most recent Certificate Year evenly divisible by five, in the case of any other determination date until said date specific on all Nonpurpose Investments held in the Trust Funds, other than the aggregate amount earned on and attributable to such excess, over (B) the aggregate amount which would have been earned on such Nonpurpose Investments during the same period had such Nonpurpose Investments been invested at a rate equal to the

Yield on the Certificates, all as determined in accordance with Section 148, plus (ii)) the aggregate amount earned on and attributable to such excess.

(al) Trust Estate. The term "Trust Estate" shall mean the property conveyed to the Trustee pursuant to Article II hereof.

(am) Trust Funds. The term "Trust Funds" shall mean all funds held by the Trustee in any of the funds or accounts established pursuant to this Trust Agreement, other than funds held in the Revenue Account.

(an) Yield. The term "Yield" has the meanings set forth below in the following contexts:

(1) Taxable Investments: the "yield" of all Taxable Investments acquired with (or representing an investment of) Gross Proceeds of the Certificates (or money replaced thereby) on or before any date means the actuarial "yield" of all such Taxable Investments, as "yield" is defined in section 1.103-13(c) of the Regulations, as supplemented by section 1.148-9T(h) of the Regulations, and

(2) Certificates: the actuarial "yield" of the Certificates, as defined in section 1.148-3T of the Regulations, determined in accordance with section 1.148-9T(a) of the Regulations.

Section 1.02. Rules of Construction. Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Trust Agreement, refer to this Trust Agreement.

(End of Article I)

## ARTICLE II

### RECITALS AND REPRESENTATIONS

Section 2.01. Agreement. The Corporation and the Obligor have entered into the Agreement whereby the Corporation has agreed to lease the Project to the Obligor and the Obligor has agreed to lease the Project from the Corporation.

Section 2.02. The Project. The Project will be acquired and accepted by the Obligor in accordance with the terms and specifications of the Agreement, the documents by which bids were solicited by the Corporation, any Acquisition Contract awarded by the Corporation for the acquisition, construction and installation of Improvements and any Acquisition Contract awarded by the Obligor on behalf of the Corporation for the design of the Improvements.

Section 2.03. Payments. Under the Agreement, the Obligor is obligated, to the extent of annual appropriations therefor from Available funds, to pay to the Corporation, or its assigns, Rental Payments for the lease of the Project. In addition, the Obligor has agreed to transfer to the Trustee a monthly payment in an amount equal to the first \$106,000 of Project Revenues received by the Obligor in the month immediately preceding the month in which each Rental Payment is due; provided, however, that no such payment is required if: (i) the Trustee has previously advised the Obligor that amounts sufficient to satisfy such Rental Payment are already on deposit in the Agreement Payment Account (as defined in the Trust Agreement), or (ii) capitalized interest is available to satisfy such Rental Payment.

Section 2.04. Deposit of Funds. The Corporation is required to deposit or cause to be deposited with the Trustee certain sums of money to be held, credited and applied in accordance with the terms hereof.

Section 2.05. Assignment to Trustee. By the DMS Lease Assignment Agreement, a copy of which has been furnished to and received by each of the parties hereto, the Corporation has assigned to the Trustee for the benefit of the Owners of the Certificates all of its right, title and interest in and to the Agreement, including the right to receive the payments for the Project made by the Obligor as set forth in the Agreement, but not the Corporation's responsibilities or obligations under the Agreement, and the Corporation has agreed to execute the Deed of Trust to grant the Trustee a lien on the Project to secure performance of the Obligor's and the Corporation's obligations hereunder. As the Corporation and/or the Obligor enters into each Acquisition Contract pursuant to the Agreement, the Corporation and/or the Obligor will assign to the Trustee, for the benefit of the Certificate Owners, all of the Corporation's and/or the

Obligor's right, title and interest, but not the Corporation's or the Obligor's obligations or responsibilities, under such Acquisition Contract, including but not limited to the right to exercise such rights and remedies conferred on the Corporation and/or the Obligor as may be necessary to protect the interest of the Certificate Owners. In addition, the Obligor has agreed to transfer to the Trustee monthly payments of \$106,000 to be held and disbursed by the Trustee in accordance with the terms of this Trust Agreement.

Section 2.06. Trustee. The Corporation agrees to appoint the Trustee to: (a) prepare, execute and deliver the Certificates; (b) receive the proceeds from the sale of the Certificates; and (c) apply and disburse the proceeds from the sale of the Certificates and the payments received hereunder as hereinafter provided and to receive all payments to be made pursuant to the Agreement. The Obligor, to the extent provided herein, and the Corporation agree to appoint the Trustee to perform all other duties and obligations of the Trustee as provided for herein. The Obligor agrees to make all payments pursuant to the Agreement directly to the Trustee in immediately available funds on or before the Business Day the Rental Payments are due.

Section 2.07. The Corporation and the Obligor. The Corporation and the Obligor each represents, warrants, covenants and agrees for the benefit of the Trustee and the Certificate Owners, from time to time, that it will do, execute, acknowledge and deliver each and every further act, deed, conveyance, transfer and assurance necessary or proper for the perfection of any and all of the security interests in the Project provided for in the Agreement, whether now owned or held or hereafter acquired, including but not limited to executing or causing to be executed such financing statements and continuation statements as shall be necessary under applicable law to perfect and maintain such security interests, with the expense of such to be borne by Obligor, from and to the extent of lawfully appropriated or available funds as provided in the Agreement and this Trust Agreement.

Section 2.08. Authority to Contract. Each of the parties has authority to enter into this Trust Agreement and has taken all actions necessary to authorize its execution and delivery by its duly authorized officers signing on the signature page hereof and the performance of its respective obligations hereunder.

Section 2.09. Tax-Exempt Obligations. In Section 2.1(j) of the Agreement, the Obligor has represented, covenanted and warranted that the Project will not be used in a private business use as defined therein.

Section 2.10. Conditions Precedent Satisfied. All acts, conditions and things required by law to exist, happen and be performed precedent to and in connection with the execution and

entering into of this Trust Agreement have happened and have been performed in regular and due time, form and manner required by law, and the parties hereto are now fully empowered to execute and enter into this Trust Agreement. It is further certified, recited and declared by the Obligor that all acts, conditions and things required by the Constitution and statutes of the State of Texas and this Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of the Agreement exist, have happened and have been performed in due time, form and manner as required by law.

NOW, THEREFORE, in consideration of the mutual undertakings, provisions and agreements herein contained, in order to secure the payment of the principal of and premium, if any, and interest on the Certificates according to their true intent and meaning and to the extent herein provided, to secure the performance and observance of all covenants and conditions therein or herein contained and to declare the terms and conditions upon and subject to which the Certificates are and are intended to be issued, executed, held, secured and enforced, for and in consideration of these premises and of the purchase and acceptance of the Certificates by the Owners thereof from time to time and of the acceptance by the Trustee of the trust hereby created and for other good and valuable considerations the receipt and sufficiency of which is hereby acknowledged, this Trust Agreement has been executed and delivered by the Obligor, the Corporation and the Trustee, and, pursuant to the DMS Lease Assignment Agreement and the DMS Acquisition Contract Assignment Agreement, the Corporation has granted and assigned and hereby affirms its grant and assignment to the Trustee of: (a) all right, title and interest of the Corporation in and under the Agreement; (b) all right, title and interest of the Corporation in and to all Rental Payments made by the Obligor from and after the date of this Trust Agreement and other income, charges and funds realized from the lease, sale or other disposition of the Project; and (c) all right, title and interest of the Corporation in and to any Acquisition Contracts which have been assigned to the Trustee and which may be assigned to the Trustee in the future. The Trustee hereby declares that it will hold the same in trust for the benefit of the Certificate Owners in accordance with the terms of this Trust Agreement together with all funds and investments in the Trust Fund and all funds deposited with the Trustee pursuant to the DMS Lease Assignment Agreement and all right, title and interest of the Corporation and of the Obligor in any Acquisition Contract which has been assigned to the Trustee and which may be assigned to the Trustee in the future, all subject to and in accordance with this Trust Agreement (collectively referred to as the "Trust Estate").

TO HAVE AND TO HOLD all and singular the Trust Estate whether now owned or hereafter acquired unto the Trustee and its successors in trust and to its assigns forever;



BUT IN TRUST NEVERTHELESS, for the equal and ratable benefit, security and protection of all present and future Owners of the Certificates issued or to be issued under and secured by this Trust Agreement, for the enforcement of the payment of the principal of and premium, if any, and interest on the Certificates, when payable, according to the true intent and meaning thereof and of this Trust Agreement and to secure the performance of and compliance with the covenants, terms and conditions of this Trust Agreement, without preference, priority or distinction, as to lien or otherwise, of any one Certificate over any other by reasons of priority in the issuance or negotiation thereof or otherwise, so that each and all Certificates shall have the same right, lien and privilege under this Trust Agreement and shall be equally and ratably secured hereby, as if all the Certificates had been made, issued and negotiated simultaneously with the delivery of this Trust Agreement, it being intended that the lien and security of this Trust Agreement shall take effect from the date hereof, without regard to the date of actual issue, sale or disposition of the Certificates as though upon such date all the Certificates were actually issued, sold and delivered to purchasers for value; provided, however, that if the Certificates shall have been paid and discharged in accordance with the provisions hereof and if there shall well and truly be kept, performed and observed all the covenants and conditions pursuant to the terms of this Trust Agreement, and if there shall be paid or caused to be paid to the Trustee all sums of money due or to become due in accordance with the terms and provisions hereof, then this Trust Agreement and the rights hereby granted shall cease, terminate and be void; otherwise, this Trust Agreement shall be and remain in full force and effect.

And it is expressly declared that all Certificates issued and secured hereunder are to be issued, executed and delivered and all said Rental Payments and other income, charges, funds, rights, titles and interests hereby pledged and assigned are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes provided in this Trust Agreement, and it is agreed and covenanted with the respective Owners, from time to time, of the said Certificates or any part thereof as set forth herein.

(End of Article II)

## ARTICLE III

### CERTIFICATES; TERMS AND PROVISIONS

#### Section 3.01. Preparation of Certificates.

(a) The Corporation hereby authorizes the Trustee, upon receipt of written request from an Authorized Officer of the Corporation, to prepare, execute and deliver Certificates in an aggregate principal amount of \$10,300,000.00 evidencing proportionate ownership interests in Rental Payments to be paid by the Obligor under the Agreement. The Certificates shall mature in the amounts and bear interest as set forth in a Request for Execution and Delivery of the Certificates of Participation, in the form of Exhibit "A" hereto, delivered to the Trustee by the Corporation.

(b) No Certificates shall be executed and delivered under this Trust Agreement other than the Certificates delivered pursuant to subsection 3.01(a) hereof and Certificates delivered upon transfer or exchange or in replacement thereof as provided by Sections 3.08 and 3.09 hereof. At any time while the Certificates are outstanding, no additional certificates payable from Rental Payments and secured by a lien and charge upon the Rental Payments securing the Outstanding Certificates shall be issued hereunder.

Section 3.02. Form of Certificates; Medium of Payment. The Certificates shall be delivered in the form of fully registered Certificates in the aggregate initial principal amount of \$10,300,000.00 and shall be substantially in the form set forth in Exhibit "B" attached hereto and incorporated herein by this reference. The Certificates shall be issued in minimum initial denominations of \$100,000.00 and in integral multiples of \$5,000.00 in excess thereof; provided, however, that each Owner shall receive only one (1) Certificate, which Certificate shall represent such Owner's entire proportionate interest in the Certificates and the Rental Payments. The Certificates may be printed, lithographed or typewritten and may contain such reference to any of the provisions of this Trust Agreement as may be appropriate. The Certificates shall be payable solely in lawful money of the United States of America.

Section 3.03. Date of Certificates. The Certificates shall be dated as of the date of their execution and delivery. Each Certificate shall bear interest from the Certificate Payment Date to which interest has been paid next preceding the date of execution and delivery thereof unless (a) it is executed and delivered after the first day of the month of a Certificate Payment Date (the "Next Certificate Payment Date"), in which event it shall bear interest from the Next Certificate Payment Date, or (b) it is executed and delivered prior to December 15, 1990, in which

event it shall bear interest from June 15, 1990. The Trustee shall insert the date of execution of each Certificate on the place provided for such purpose on the Certificate.

Section 3.04. Payment of Principal and Interest with Respect to Certificates.

(a) Principal with respect to the Certificates shall be payable semiannually on the Certificate Payment Dates, beginning December 15, 1991, in an aggregate amount equal to the sum of the portions of the Rental Payments due on the 15th day of each of the preceding six (6) months which are designated as the principal portion on Exhibit "A" to the Form of the Certificate which is Exhibit "B" hereto. The aggregate principal due on the Certificates to maturity or at redemption thereof, whichever is earlier, is the sum of the portions of each Rental Payment to be paid prior to the maturity date for the respective Certificate which portions are designated as principal portions on Exhibit "A" to the Form of the Certificate which is Exhibit "B" hereto.

(b) Interest with respect to the Certificates shall be payable semiannually on the Certificate Payment Dates, beginning December 15, 1990, to and including the date of maturity or redemption whichever is earlier as shown on Exhibit "A" to the Form of the Certificate which is Exhibit "B" hereto. The aggregate of said interest is the sum of the portions of each Rental Payment which are designated as the interest portion on Exhibit "A" to the Form of the Certificate which is Exhibit "B" hereto.

(c) Except as described in the immediately following sentence, payments of principal and interest on the Certificate Payment Date and made with respect to any Certificates shall be made to the person appearing on the Certificate Register of the Trustee as the Owner thereof at the close of business on the first calendar day of the month of the Certificate Payment Date. The final distribution of principal with respect to any Certificate shall be made only upon surrender of such Certificate to the Trustee at its Principal Office.

(d) If a Certificate shall not be presented for payment when the final principal payment thereof becomes due, either at maturity or at the date fixed for redemption thereof, and funds sufficient to pay such Certificate shall have been made available to the Trustee for the benefit of such Certificate Owner, it shall thereafter be the duty of the Trustee to hold such funds, without liability for interest thereon or the benefit of any "float" earned by the Trustee, for the benefit of such Certificate Owner. Such Certificate Owner shall thereafter be restricted exclusively

to such funds for any claim of whatever nature he may have under this Trust Agreement or on, or with respect to, said Certificate. The Trustee's obligation to hold such funds shall continue for a period of three years following the date on which the principal of the Certificate became due (whether at maturity, or at the date fixed for redemption thereof), or otherwise, as the case may be, at which time the Trustee shall surrender, pursuant to and in accordance with the provisions of any escheat or forfeiture laws including Title 6 of the Texas Property Code, any remaining funds so held by it. Upon such surrender, any claim of whatever nature under this Trust Agreement by the Certificate Owner shall be made pursuant to such laws or Title 6 of the Texas Property Code.

Section 3.05. Execution. The Certificates shall be executed by the manual signature of any employee as may be designated by an Authorized Officer of, and in the name of, the Trustee, under this Trust Agreement, solely in its capacity as Trustee. No Certificate shall be entitled to any benefit under this Trust Agreement, or be valid for any purpose, unless there appears on such Certificate the manual signature of the Trustee or its designated employee as required in the preceding sentence.

Section 3.06. Registration. The Certificates shall not be entitled to any right or benefit under this Trust Agreement, or be valid for any purpose, unless there appears on the Certificates a statement by the Trustee that the Certificates have been registered by the Comptroller of Public Accounts of the State of Texas or there is attached thereto a certificate of registration substantially in the form provided in Exhibit "B" attached hereto, manually executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent, and such statement by the Trustee or certificate duly signed shall in either case be conclusive evidence, and the only evidence, that the Certificates have been duly registered.

Section 3.07. Certificate Register. The Trustee will maintain a register of the name and address of each Certificate Owner and, if a Certificate is transferred pursuant to the terms of this Trust Agreement, of the successor Owner of such Certificate. The Trustee shall deem and treat the person or entity in whose name any Outstanding Certificate shall be registered upon the Certificate Register as the absolute owner of such Certificate, whether such Certificate shall be overdue or not, for the purpose of receiving payments of, or on account of, the principal, premium if any and interest payments with respect to such Certificate and for all other purposes, and all such payments so made to any such Owner or upon his or her order shall be valid and effectual to satisfy and discharge the liability upon such Certificate to the extent of the sum or sums so paid, and neither the Obligor nor the Trustee shall be affected by any notice to the contrary.

Section 3.08. Transfer of Certificates. The Certificates may only be transferred to sophisticated institutional investors and only after the purchaser has provided the Trustee an investment letter in the form attached as Exhibit "G" hereto. In general, a sophisticated institutional investor is one which has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, and is capable of protecting its own interest. A potential institutional investor will be considered sophisticated if it is able to bear the economic risk of the investment represented by its purchase of the Certificates, including the risk that the Project financed out of the proceeds of the Certificates may not generate sufficient revenues to enable the Obligor to pay the amounts evidenced by the Certificates. A Certificate may be transferred only by recording the transfer on the Certificate Register, upon surrender of such Certificate for cancellation accompanied by a written instrument of transfer in a form approved by the Trustee and duly executed by the Owner or his or her duly authorized attorney-in-fact, with a guarantee of signature. Until any such transfer, the Trustee may treat the Owner of any Certificate as shown by its records as the owner thereof and shall not be charged with any notice of any claim or demand respecting such Certificate for the interest represented thereby by any other party. As to matters affecting the title, ownership, warranty, or transfer of Certificates, Article 8 of the Texas Business and Commerce Code, the Texas Uniform Act for Simplification of Fiduciary Security Transfers under Chapter 33 of the Texas Business and Commerce Code and other statutes and rules with respect to the transfer of securities, as each code, act, statute, and rule is adopted and then in force in the State of Texas, shall govern and apply. Upon surrender of the Certificate and registration of the transfer, the Trustee shall cancel the surrendered Certificate and shall execute and deliver in the name of the transferee or transferees a new Certificate or Certificates for the original aggregate principal amount at the time of the initial issuance of the Certificates and in the case of two or more transferees, the proportionate original principal amounts, in each case as certified by the Owner in a manner acceptable to the Trustee. The Trustee shall require the Owner requesting such transfer to pay the Trustee the cost of obtaining and printing new Certificates and any tax, fee or other governmental charge required to be paid with respect to such transfer. The Trustee shall not be required to make any transfers of Certificates during the period between the first calendar day of the month of each Certificate Payment Date and such Certificate Payment Date or during the fifteen (15) calendar days next preceding the date of any redemption.

Section 3.09. Exchange of Certificates. Certificates may be exchanged upon surrender thereof for cancellation at the Principal Office of the Trustee, for a like aggregate amount of Certificates of the same maturity, subject to the provisions of

Section 3.08 and 3.02 hereof. Any Certificate surrendered in an exchange shall be cancelled. The Trustee shall require the Owner requesting such exchange to pay the Trustee the cost of preparing new Certificates and any tax, fee or other governmental charge required to be paid with respect to such exchange. The Trustee shall not be required to make any exchanges of Certificates during the period between the first calendar day of the month of each Certificate Payment Date and such Certificate Payment Date or during the fifteen (15) calendar days next preceding the date of any redemption.

Section 3.10. Certificates Mutilated, Lost, Destroyed or Stolen. If any Certificate shall become mutilated, the Trustee, at the expense of the Owner of said Certificate, shall execute and deliver a new Certificate of like tenor, maturity and number (except that such number may be preceded by a distinguishing prefix) in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee shall be cancelled by it and furnished to the Corporation. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted by the Owner or his duly authorized agent to the Trustee, and, if such evidence is satisfactory to the Trustee and if an indemnity bond in an amount and form satisfactory to the Trustee shall be given, the Trustee shall execute and deliver a new Certificate of like tenor and maturity and numbered as the Trustee shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen.

The Trustee may require the payment of a sum not exceeding the actual cost of preparing each new Certificate issued under this Section 3.10 and of the expenses incurred by the Trustee hereunder. Any Certificate issued under the provisions of this Section 3.10 in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and ratably entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee shall not treat both the original Certificate and any replacement Certificate as being outstanding for the purpose of determining the amount of Certificates which may be issued hereunder or for the purpose of determining any percentage of Certificates outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section 3.10, in lieu of delivering a new Certificate for a Certificate which has been mutilated, lost, destroyed or stolen and which has matured, the Trustee may redeem such Certificate in accordance with Article VI hereof.

Section 3.11. Place of Payment. The Corporation hereby appoints the Trustee paying agent for the Certificates. The final principal payment of each Certificate shall be payable at

the Principal Office of the Trustee. With the exception of the final principal payment of each Certificate, interest and principal with respect to Certificates shall be payable by check or draft of the Trustee mailed on the Certificate Payment Date to the Owner of record of such Certificate as provided in Section 3.04 hereof at the address shown on the Certificate Register or by other customary means as agreeable between the Trustee and Certificate Owners. If wire transfer is agreed to as the means of payment, the cost of such wire transfer service shall be reimbursed to the Trustee pursuant to Section 7.07 hereof. The parties hereto agree that wire transfer shall be an agreed means of payment to any Certificate Owner which holds at least twenty-five percent (25%) of the outstanding principal amount of Certificates and provides written wire transfer instructions to the Trustee including the name of the receiving bank and such bank's federal reserve account number prior to the first day of the month of the next Certificate Payment Date.

Section 3.12. Evidence of Signatures of Certificate Owners and Ownership of Certificates. Any request, direction, consent, revocation of consent or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Certificate Owners in person or by their attorneys in-fact or agents duly appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates shall be sufficient for any purpose of this Trust Agreement if made in a manner satisfactory to the Trustee.

The ownership of Certificates shall be proved by the Certificate Register held by the Trustee under the provisions of this Trust Agreement. Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or suffered to be done by the Corporation or the Trustee in pursuance of such request or consent.

Section 3.13. Cancellation of Certificates. All Certificates surrendered upon any exchange or transfer provided for in this Trust Agreement shall be promptly cancelled by the Trustee and shall be periodically furnished to the Corporation or in lieu thereof the Trustee may furnish a certificate of destruction of such Certificates.

(End of Article III)

## ARTICLE IV

### ESTABLISHMENT AND ADMINISTRATION OF FUNDS AND ACCOUNTS

Section 4.01. Property Trust Fund. There is hereby established with the Trustee a special trust fund to be designated "The Newton County Trust Fund," referred to herein as the "Trust Fund". The Trustee shall keep the Trust Fund separate and apart from all other funds held by it. Within the Trust Fund, there are hereby established, for the benefit of the Obligor and the Owners, the separate and distinct accounts more particularly described in this Article IV, other than the Revenue Account. On the Issue Date, the Trustee agrees to accept, on behalf of the Corporation and for the benefit of the Obligor, \$10,300,000.00 plus accrued interest representing the proceeds from the sale of the Certificates. The Trustee agrees to deposit, on behalf of the Corporation and for the benefit of the Obligor, the proceeds from the sale of the Certificates, plus accrued interest, if any, in the amounts and to the accounts designated by the Obligor and the Corporation in the Certificate of Application of Proceeds to be provided to the Trustee on the Issue Date, which accounts shall thereafter be subject to and be administered pursuant to the terms of this Article IV. The Trustee further agrees to deposit, on behalf of the Obligor, the monthly payments of \$106,000 transferred to the Trustee from time to time pursuant to the Agreement in the Revenue Account, which account shall be administered pursuant to the terms of this Article IV.

### Section 4.02. Establishment and Application of Property Acquisition Account.

(a) Within the Trust Fund, there is hereby established a special account to be designated as "Newton County Property Acquisition Account," referred to herein as the "Property Acquisition Account". The Trustee shall administer the Property Acquisition Account as provided in this Article IV.

(b) Amounts in the Property Acquisition Account shall be disbursed for Financed Costs and otherwise as specified in this Article IV.

(c) The initial disbursement from the Property Acquisition Account for costs incurred in connection with the issuance and sale of the Certificates, the acquisition of the Land and title insurance relating thereto and other costs related to the design and construction of the Project (together, the "Issuance Costs") shall be made by the Trustee only upon receipt of a Requisition Requesting Disbursement of Issuance Costs, in the form attached hereto as Exhibit "C," approved and executed by Authorized Officers of the Obligor and the Corporation.



(d) Disbursements from the Property Acquisition Account for Financed Costs other than Issuance Costs shall be made by the Trustee only upon receipt of a Requisition Requesting Disbursement, and, when applicable, the Acceptance Certificate required to be an attachment thereto, in the form attached hereto as Exhibit "D," approved and executed by Authorized Officers of the Obligor and the Corporation. Upon receipt of a Requisition Requesting Disbursement and its required attachments executed by Authorized Officers of the Obligor and the Corporation, the Trustee may rely conclusively upon such Requisition and shall have no liability to the Obligor on account of any disbursement from the Property Acquisition Account in accordance with such Requisition, absent negligence or willful or wanton misconduct and shall have no liability to the Corporation on account of any disbursement from the Property Acquisition Account in accordance with such Requisition, absent gross negligence or willful or wanton misconduct.

(e) Upon a redemption pursuant to Section 6.01 hereof, other than Section 6.01(d), all funds then on deposit in the Property Acquisition Account shall be transferred to the Redemption Account in accordance with the terms of Section 4.05 hereof, and the Property Acquisition Account shall be closed. Upon a redemption pursuant to Section 6.01(d) hereof, an amount equal to the Base Amount (as defined in Section 6.01(d) hereof) shall be transferred from the Property Acquisition Account to the Redemption Account in accordance with Section 4.05 hereof, any remaining amount in the Property Acquisition Account shall be transferred to the Agreement Payment Account in accordance with Section 4.02(f) hereof, and the Property Acquisition Account shall be closed.

(f) Subject to the provisions of subsection (e) of this Section 4.02, after final disbursements in respect to the payment of all Financed Costs as provided for by this Section 4.02 and otherwise as provided for by this Article IV as evidenced by the fully executed Acceptance Certificate, the Trustee shall transfer any amounts remaining in the Property Acquisition Account into the Agreement Payment Account, and the Property Acquisition Account shall be closed.

(g) No disbursement for payment of Financed Costs other than Financed Costs disbursed or authorized to be disbursed in connection with the issuance and sale of the Certificates shall be made from the Property Acquisition Account in excess of the amounts available from the investments at the date of maturity of such investments and prior to the dates set forth in the Draw-Down Schedule attached hereto as Exhibit "F".

(h) No amounts shall be withdrawn or transferred from or paid out of the Property Acquisition Account except as provided in this Article IV and in Section 5.03 hereof.

Section 4.03. Establishment and Application of Agreement Payment Account.

(a) Within the Trust Fund, there is hereby established a special account to be designated as "The Newton County Agreement Payment Account," referred to herein as the "Agreement Payment Account". Such account shall be maintained by the Trustee until either the Rental Payments are paid in full or the Concluding Payment is paid in full pursuant to the terms of the Agreement, at which time any remaining amounts in the Agreement Payment Account shall be paid to the Obligor. Capitalized interest, accrued interest, if any, Rental Payments, deposits and payments by the Obligor pursuant to Section 6.7 of the Agreement in excess of amounts required to restore transfers from the Reserve Account made pursuant to subsection 4.04(b) hereof, transfers from the Reserve Account pursuant to Section 4.04 hereof, transfers from the Revenue Account pursuant to Section 4.07 hereof, proceeds of insurance or condemnation and all other funds derived from the lease, sale, sublease or other disposition of the Project, payment of the Concluding Payment, such other amounts as may be paid to the Trustee as assignee of the Corporation pursuant to the Agreement or the DMS Lease Assignment Agreement and such amounts as are transferred by the Trustee upon closing of the Property Acquisition Account shall be immediately deposited, as soon as practicable, by the Trustee in the Agreement Payment Account.

(b) To the extent of funds contained therein and in accordance with Section 4.04 hereof, the Trustee shall withdraw from the Agreement Payment Account, on each Certificate Payment Date, an amount equal to the amount of interest payments due with respect to the Certificates on such Certificate Payment Date and shall cause the same to be applied to the payment of interest payments due with respect to the Certificates on such Certificate Payment Date.

(c) To the extent of funds contained therein and in accordance with Section 4.04 hereof, the Trustee shall withdraw from the Agreement Payment Account on each Certificate Payment Date, an amount equal to the amount of principal payments due with respect to the Certificates on such Certificate Payment Date and shall cause the same to be applied to the payment of principal due with respect to the Certificates maturing on such Certificate Payment Date.

(d) To the extent funds remain in the Agreement Payment Account after (i) the payment of the interest on and principal of the Certificates, pursuant to Sections 4.03(b) and (c) hereof, and (ii) the monies in the Agreement Payment Account have been used or applied in accordance with Sections 4.06, 4.08(c) and 4.08(g) hereof, the Trustee shall withdraw within fifteen (15) calendar days after each Certificate Payment Date, the excess of such remaining funds over an amount equal to the Rental Payment due on such Certificate Payment Date and transfer such excess funds to the depository bank of the Obligor. The Trustee shall notify the Manager either by telephone, telecopy or first class mail, postage prepaid, of the amount and date of such transfer to the Obligor. Notwithstanding the ability of the Obligor to receive such monies, the Obligor may, by written instructions to the Trustee, with a copy to the Manager, direct the Trustee to deposit such monies in the Revenue Account as an advance installment of the monthly payment of \$106,000 required by Section 6.01 of the Agreement and Section 4.07 of this Trust Agreement to be used in accordance with the terms of this Trust Agreement.

(e) Upon a redemption in whole pursuant to Section 6.01 hereof, all funds in the Agreement Payment Account shall be transferred to the Redemption Account in accordance with the terms of Section 4.05 hereof.

(f) No amounts shall be withdrawn or transferred from or paid out of the Agreement Payment Account except as provided in this Article IV and in Section 5.03 hereof.

Section 4.04. Establishment and Application of Reserve Account.

(a) Within the Trust Fund, there is hereby established an account to be designated "The Newton County Reserve Account," referred to herein as the "Reserve Account". Such account shall be maintained by the Trustee until the Rental Payments are paid in full pursuant to the terms of the Agreement. The Reserve Account shall be initially funded with \$999,000 of the net proceeds derived from the issuance and sale of the Certificates. Investment earnings on the monies on deposit in the Reserve Account shall be retained in the Reserve Account until withdrawn and applied for the purposes permitted under Section 4.04(c) hereof.

(b) If on any Certificate Payment Date the amounts in the Agreement Payment Account are less than the amounts of principal and interest payments due with respect to the Certificates on such Certificate Payment Date, the Trustee shall transfer from the Reserve Account to the Agreement Payment Account an amount sufficient to make up such

deficiency. In the event of any such transfer, the Trustee shall, within five (5) Business Days after making such transfer, send written notice to the Obligor of the amount and date of such transfer. Immediately upon receipt of the notice of transfer from the Trustee described in the immediately preceding sentence, the Obligor shall immediately take all budgetary steps available to replenish as soon as practicable such funds advanced from the Reserve Account from appropriations of amounts legally Available to Obligor, as required pursuant to Section 6.7 of the Agreement. This obligation of Obligor to replenish advances from the Reserve Account shall continue until all advanced funds have been restored. Notwithstanding the foregoing provisions of this Section 4.04, the obligations of the Obligor under this Section 4.04 shall be subject to and shall not exceed the obligations of the Obligor under Article VI of the Agreement.

(c) Funds in the Reserve Account shall be used solely (i) for the purpose of making Rental Payments on behalf of the Obligor to the extent necessary to make up deficiencies in the Agreement Payment Account in the event that funds in the Agreement Payment Account are less than the amounts of principal and interest payments due with respect to the Certificates, and for that purpose funds may be withdrawn from the Reserve Account and transferred to the Agreement Payment Account as provided in subsection (b) of this Section 4.04; (ii) as a credit against all remaining Rental Payments on and after the Rental Payment Date on which the total amount of the remaining Rental Payments during the Lease Term is less than the total funds available in the Reserve Account, in which case the sum of principal and interest payments due with respect to the Certificates on each Certificate Payment Date thereafter shall be transferred to the Agreement Payment Account by the Trustee not less than three (3) Business Days prior to each such Certificate Payment Date; (iii) to pay any monies owed by the Obligor due to a Determination of Taxability pursuant to Section 6.9 of the Agreement; (iv) to pay the fees and expenses of the Trustee in accordance with subsection 4.08(d) and Section 7.07 hereof; or (v) to make payments to the extent and as provided in Sections 4.06 and 7.09 hereof; provided, however, if the balance in the Reserve Fund shall ever exceed the Reserve Requirement, the Trustee shall transfer the excess to the Agreement Payment Account within three (3) Business Days. Upon receipt of any delinquent Rental Payment with respect to which funds have been advanced from the Reserve Account, such Rental Payment shall be deposited in the Reserve Account.

(d) Upon a redemption in whole pursuant to Section 6.01 hereof, all funds in the Reserve Account shall be transferred to the Redemption Account in accordance with the

terms of Section 4.05 hereof. Any funds remaining in the Reserve Account following payment of all principal, premium, if any, and interest due with respect to all Certificates and payment of or provision for the final Rebatable Amount shall be remitted by the Trustee to the Obligor, less the fees and expenses of the Trustee provided for in Section 7.07 hereof.

(e) No amounts shall be withdrawn or transferred from or paid out of the Reserve Account except as provided in this Article IV.

Section 4.05. Establishment and Application of Redemption Account. Within the Trust Fund, there is hereby established an account designated "The Newton County Certificate Redemption Account," referred to herein as the "Redemption Account". Funds to be used for redemption of the Certificates pursuant to Section 6.01 hereof shall be transferred by the Trustee from the Property Acquisition Account, the Reserve Account and the Agreement Payment Account and deposited in the Redemption Account one (1) Business Day prior to the date fixed for retirement or redemption of the Certificates. Said funds shall be set aside in the Redemption Account solely for the purpose of redeeming the Certificates in advance of their maturity and shall be applied on or after the date fixed for redemption to the payment of the principal of and premium, if any, and interest on the Certificates to be redeemed upon presentation and surrender of such Certificates. If there are not sufficient funds available to pay in full all interest and principal then due on the Certificates to be redeemed. The Trustee shall apply all available funds first to the payment of all interest due with respect to such Certificates pro rata in proportion to the respective aggregate amount of the total amount of interest due if necessary, and second to the payment of the principal of such Certificates, pro rata in proportion to the respective amount of the total amount of principal due if necessary. Any funds remaining in the Redemption Account following redemption of or other payment of, and payment of all principal, premium if any and interest due with respect to, all Certificates and payment of or provision for the final Rebatable Amount shall be remitted by the Trustee to the Obligor less the fees and expenses of the Trustee provided for in Section 7.07 hereof.

Section 4.06. Establishment and Application of Special Rebate Account.

(a) Within the Trust Fund, there is hereby established an account to be designated "The Newton County Special Rebate Account," referred to herein as the "Special Rebate Account". Such account shall be maintained by the Trustee as provided in this Trust Agreement until the Final Rebate Determination Date or, if later, until all payments required

to be paid to the United States under Section 148 have been made and shall be held in trust by the Trustee for the benefit of the United States, notwithstanding any other provision of this Trust Agreement, unless an opinion of Independent Counsel is provided to the Trustee by the Obligor or the Corporation to the effect that failure to make such application as so provided will not adversely affect any exclusion from gross income of interest on any Certificate under the Code.

(b) Within fifty (50) days after the end of each Certificate Year, the Obligor shall cause a qualified independent firm of certified public accountants experienced in such matters and acceptable to the Trustee (an "Accountant") to calculate and provide to the Trustee the Excess Amount to be deposited to the Special Rebate Account. Further, within such period, the Obligor shall furnish to the Trustee a written certificate by an Authorized Officer of the Obligor directing the Trustee to deposit such Excess Amount in the sum specified and from the sources specified in this Section 4.06.

Within five (5) days from the receipt of such certificate, the Trustee shall transfer the Excess Amount into the Special Rebate Account from the Property Acquisition Account and the Reserve Account provided that such transfers shall be made only to the extent the Excess Amount is attributable to earnings on investments of funds held in the Property Acquisition Account and the Reserve Account; the remaining Excess Amount, if any, shall be transferred into the Special Rebate Account from the Agreement Payment Account. The Trustee shall also deposit or transfer to the credit of the Special Rebate Account each amount delivered to the Trustee by the Obligor for deposit therein and each amount transferred from the Revenue Account pursuant to Section 4.07(d)(ii).

For purposes of determining any Tentative Rebate Amount, (i) income shall be determined by the Obligor in accordance with federal income tax accounting principles, taking into account, for example, gains and losses realized on the disposition of investments, excluding transaction costs incurred in acquiring, carrying, selling or redeeming any investment, and disregarding the fact that the recipient of such income might not otherwise be subject to federal income taxation, and (ii) the special rules of section 148(f)(4) of the Code shall be applied to the full extent possible.

To the extent that, upon any Issue Anniversary Date, the net amount theretofore deposited into the Special Rebate Account in respect of the issue for the same period that the

Tentative Rebate Amount is computed exceeds the Tentative Rebate Amount determined as of said date by or on behalf of the Obligor and furnished to the Trustee by a written certificate signed by an Authorized Officer of the Obligor, such excess in the Special Rebate Account shall be transferred to the Agreement Payment Account upon written instructions by the Obligor to the Trustee.

(c) The Obligor shall deliver to the Trustee, within fifty-five (55) days after the end of each fifth Certificate Year and the last Certificate Year, the following:

(i) Statement of Rebatable Amount and Income: a statement, signed by an Accountant, stating:

(A) the Rebatable Amount as of the end of such Certificate Year, and

(B) if the end of such Certificate Year is the Final Rebate Determination Date, the income attributable to such Rebatable Amount from the Final Rebate Determination Date to the tenth (10th) day preceding the date of such statement, determined in accordance with Section 1.148-1T(b)(2) of the Regulations.

(ii) Rebate Payment: an amount which, together with the amount then held for the credit of the Special Rebate Account, is equal to the Rebatable Amount as of the end of such Certificate Year.

(iii) IRS Forms: an Internal Revenue Service Form 8038-T completed as of the end of such Certificate Year or such other form as may be required to be filed by the Regulations.

(d) If the Obligor shall discover or be notified as of any date that any payment made to the United States Treasury pursuant to this Section shall have failed to satisfy any requirement of Section 1.148-1T of the Regulations (whether or not such failure shall be due to any default by the Obligor or the Trustee), the Obligor shall (1) deliver to the Trustee a brief written explanation of such failure and any basis for concluding that such failure was innocent, and (2) pay to the Trustee (for deposit to the Special Rebate Account) and cause the Trustee to pay to the United States Treasury from the Special Rebate Account, within sixty (60) days after such discovery or notice, the "correction amount" in respect thereof specified in section 1.148-1T(c) of the Regulations together with the explanation described in the

immediately preceding Clause (1) and the other documents required by Section 4.06(f) to accompany such payment from the Special Rebate Account. If such correction amount is not paid to the United States Treasury in the amount and manner and by the time specified in such Section of the Regulations or if the failure in respect of which such amount is paid shall not have been innocent, but if in either case the Commissioner of Internal Revenue shall determine that failure to comply with section 1.148-1T of the Regulations shall not have been due to willful neglect, the Obligor shall pay to the Trustee for deposit to the Special Rebate Account and cause the Trustee to pay from the Special Rebate Account to the United States Treasury, in addition to such correction amount, the penalty in respect thereof specified in section 1.148-1T(c)(3)(ii)(B) of the Regulations.

(e) The Obligor and the Trustee shall each retain all of their respective accounting records relating to the Property Acquisition Account, Reserve Account, Agreement Payment Account, Redemption Account and the Special Rebate Account, and all calculations made in preparing the statements described in Section 4.06, for at least six years after the later of the final maturity of the Certificates or the first date on which no Certificates are Outstanding.

(f) (i) Within sixty (60) days after the end of each fifth Certificate Year and the last Certificate Year, the Trustee shall withdraw from the Special Rebate Account and pay to the United States of America the Rebatable Amount with respect to such period as determined by the Accountant.

(ii) Within five days after receipt from the Obligor of any amount pursuant to Section 4.06(d), the Trustee shall withdraw such amount from the Special Rebate Account and pay such amount to the United States of America.

(iii) All payments to the United States of America pursuant to this Subsection shall be made by the Trustee for the account and in the name of the Obligor and shall be paid by check or draft posted by registered United States Mail (return receipt requested), addressed to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255 (accompanied by the relevant Internal Revenue Service Form 8038-T described in Section 4.06(c)(iii), if such payment is described in Clause (i) of this Subsection and by the relevant Internal Revenue Service Form 8038-T and written explanation described in Section 4.06(d), if such payment is described in Clause (ii) of this Subsection).



(iv) If there are any funds remaining in the Special Rebate Account after payment of the final Rebatable Amount following the Final Rebate Determination Date to the United States of America, the Trustee shall transfer such funds to the Redemption Account.

(g) The Trustee shall preserve all statements, forms, and explanations received from the Obligor pursuant to this Section 4.06 and all records of transactions in the Special Rebate Account until six years after the retirement of all of the Certificates.

(h) If at any time during the term of this Trust Agreement the Obligor or the Trustee desires to take any action which would otherwise be prohibited by the terms of this Section, such Person shall be permitted to take such action if it shall first obtain and provide to the other Person named herein an opinion of Independent Counsel to the effect that such action shall not adversely affect the exclusion of interest on the Certificates from gross income of the Owners thereof for federal income tax purposes and shall be in compliance with the laws of the State of Texas and the terms of this Trust Agreement other than the terms of this Section.

(i) Notwithstanding anything contained in this Trust Agreement to the contrary, the Trustee shall not be under any duty to determine, calculate or question any amount, including without limitation the Rebatable Amount, the Excess Amount or the Tentative Rebate Amount or any interpretation, procedure or opinion relating to the compliance by the Obligor with Section 148. Any failure to determine, calculate or question such amounts or any interpretation, procedure or opinion relating to the compliance by the Obligor with Section 148 shall be attributable solely to the Obligor. It is expressly agreed that no Certificate Owner shall attribute to the Trustee any failure to comply with Section 148, whether by the Obligor or anyone acting on its behalf, and any subsequent adverse effect on the exclusion of interest on the Certificates from the gross income for federal income tax purposes of a recipient thereof.

Section 4.07. Establishment and Application of Revenue Account.

(a) There is hereby established a special account to be designated as the "Newton County Detention Facility Revenue Account," referred to herein as the "Revenue Account". Such account shall be maintained by the Trustee until termination of the Agreement. As provided in the Agreement, each calendar month the Obligor shall transfer within three (3) Business Days after receipt (or after the due date in the

case of fees paid for Newton County prisoners) the first \$106,000 of Project Revenues received by the Obligor in such month to the Trustee and the Trustee shall immediately deposit such funds in the Revenue Account; provided, however, that no such payment is required if: (i) the Trustee has previously advised the Obligor that amounts sufficient to satisfy the next due Rental Payment are already on deposit in the Agreement Payment Account (as defined in the Trust Agreement), or (ii) capitalized interest is available to satisfy the next due Rental Payment.

(b) The funds deposited in the Revenue Account shall immediately be invested by the Trustee in Permitted Investments pursuant to the written instructions of an Authorized Officer of the Obligor. After the funds have been invested by the Trustee, the Trustee shall immediately advise the Obligor of the balance that will be in the Revenue Account upon maturity of such Permitted Investments and of the date of such maturity.

(c) Each month before the maturity of each of the Permitted Investments made pursuant to Section 4.07(b) above, the Obligor shall instruct the Trustee to transfer the balance in the Revenue Account to the Agreement Payment Account pursuant to a draft in the form attached hereto as Exhibit "H".

(d) Each month the Trustee shall withdraw all funds from the Revenue Account in accordance with the Obligor's instructions to be allocated for purposes of this Trust Agreement solely in the following priority and manner and for no other purposes:

(i) To the extent of funds contained therein, the Trustee shall withdraw from the Revenue Account an amount equal to the next succeeding Rental Payment due to be paid by the Obligor and not otherwise provided for pursuant to sections 4.02, 4.06 and 4.08 herein or any other provision herein and shall cause the same to be deposited in the Agreement Payment Account. This amount transferred from the Revenue Account to the Agreement Payment Account shall be applied to and credited against the Obligor's next succeeding Rental Payment. Within two (2) Business Days following the transfer of such amounts from the Revenue Account to the Agreement Payment Account, the Trustee shall notify the Obligor as to the amount of credit applied against the next succeeding Rental Payment and the amount of Rental Payment, if any, remaining to be paid on the next succeeding Rental Payment Date.

(ii) To the extent of funds contained therein subsequent to any transfers pursuant to subparagraph (i) hereof, the Trustee shall then withdraw from the Revenue Account an amount equal to any other amount then due and payable by the Obligor pursuant to the provisions of the Agreement or the Trust Agreement and not otherwise provided for and shall cause the same to be paid in satisfaction of such amounts.

(iii) Subsequent to any transfers pursuant to subparagraphs (i) and (ii) hereof, the Trustee shall then withdraw from the Revenue Account all remaining funds and shall cause the same to be deposited in the Agreement Payment Account.

(e) Funds in the Revenue Account shall be used solely for the purposes and in the manner set forth in this Section 4.07. The amount deposited in the Revenue Account by the Obligor shall be separate and apart from the Trust Estate and, except as otherwise provided in this Section 4.07, shall not thereafter be used to satisfy amounts due under the Agreement or on the Certificates.

Section 4.08. Deposit and Investment of Funds in Trust Fund.

(a) The Trust Funds shall be invested by the Trustee in Permitted Investments pursuant to written instruction of an Authorized Officer of the Obligor as permitted and required by Section 6.1 of the Agreement. Such Permitted Investments shall mature, or shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when money is expected to be required for the purpose intended. Obligations purchased as an investment of any money credited to any account in the Trust Funds shall be deemed at all times to be a part of such account. The interest accruing on obligations so purchased or on such interest-bearing time deposits and any profit realized from such investment shall be credited to such account and any loss resulting from such investment shall be charged to such account. For the purpose of determining the amount on deposit to the credit of any such account, obligations in which money in such account shall have been invested shall be valued as of the business day immediately preceding each Certificate Payment Date and shall be computed as follows:

(i) for obligations the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if such prices are not published in The Wall Street Journal but are published on a regular basis in The New York Times,

then in The New York Times), at the average of the bid and asked prices for such obligations so published on the date of such valuation (or, if not so published on the date of such valuation, on the most recent date so published prior to the date of such valuation);

(ii) for obligations the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times, at the average price bid for such obligations on the date of valuation by any two nationally recognized government securities dealers (selected by the Trustee in its sole discretion) who are on the date of such valuation making a market in such obligations or, at the option of the Trustee, at the bid price published by a nationally recognized pricing service;

(iii) for obligations which are either certificates of deposit or bankers acceptances, at the face amount thereof plus accrued interest to the date of valuation; and

(iv) for obligations not described in Subparagraphs (i) through (iii), the value thereof established by prior agreement among the Trustee and the Obligor.

Subject to subsection 4.02(g) hereof, the Trustee shall sell at the best price then available or present for redemption any investment whenever it shall be necessary to do so to provide funds to make any payment or transfer required by the terms of this Trust Agreement.

(b) All interest or income received by the Trustee on the investment of funds held in the Property Acquisition Account not transferred to the Special Rebate Account pursuant to subsection 4.06 hereof shall be transferred to the Agreement Payment Account and applied as provided in subsection 4.08(g) hereof.

(c) All interest or income received by the Trustee on the investment of funds held in the Agreement Payment Account not transferred to the Special Rebate Account pursuant to subsection 4.06 hereof shall first be paid to the Trustee as compensation, as needed, as provided for in Section 7.07 hereof, and shall thereafter be applied as provided in subsection 4.08(g) hereof.

(d) All interest or income received by the Trustee on investment of funds held in the Reserve Account not

transferred to the Special Rebate Account pursuant to Section 4.06 hereof shall be retained for payment to the Trustee as compensation to the extent required pursuant to Section 7.07 hereof; thereafter, the balance of such interest or income, including any amounts retained for but not required as Trustee compensation shall be retained in the Reserve Account in the event that amounts on deposit in the Reserve Account together with the value of Permitted Investments held in such account are less than the Reserve Requirement. In the event that amounts then on deposit in the Reserve Account together with the par value of Permitted Investments held in such account exceed the Reserve Requirement and the Trustee is due no payment therefrom pursuant to the immediately preceding sentence, such excess shall be transferred to the Agreement Payment Account and shall thereafter be applied as provided in subsection 4.08(g) hereof.

(e) All interest or income received by the Trustee on investment of the Special Rebate Account and the accounts established thereunder shall be retained in the Special Rebate Account until applied pursuant to Section 4.06 hereof.

(f) The provisions of Section 4.08(a) shall apply to the Revenue Account as if the Revenue Account were included in the Trust Funds. All interest or income received by the Trustee on investment of the Revenue Account shall be retained in the Revenue Account until applied pursuant to Section 4.07 hereof.

(g) Provided that there are no delinquent Rental Payments and the fees and expenses of the Trustee have been paid as provided for in Section 7.07 hereof, amounts deposited in the Agreement Payment Account and amounts transferred to the Agreement Payment Account pursuant to subsection 4.02(f) hereof (except to the extent such amounts are required to redeem Certificates in accordance with subsection 6.01(d) hereof) or this Section 4.08 shall be transferred to the Reserve Account in the event that amounts on deposit in the Reserve Account together with the value of Permitted Investments held in such account are less than the Reserve Requirement, shall thereafter be applied as a credit against the Rental Payments due by the Obligor under the Agreement on the Rental Payment Dates following the date of deposit and preceding the next succeeding Certificate Payment Date, and any excess thereafter shall be transferred by the Trustee to the Obligor as soon as possible.

(h) The Trustee shall act only as agent in making or disposing of any investment. The Trustee shall not be liable for any loss resulting from the making or disposition of

any investment pursuant to the provisions of subsection (a) of this Section 4.08, and any such losses shall be charged to the account with respect to which such investment was made. Further, the Trustee shall not be responsible or liable for the loss of investment income resulting from the failure of the Obligor to provide any or proper written instructions to the Trustee directing the investment of the Trust Funds pursuant to subsection (a) of this Section 4.08. The Trustee shall not be liable or responsible to the Certificate Owners or to any party hereto for the Certificates becoming "arbitrage bonds" within the meaning of Section 148 for any reason including without limitation the investment instructions given to the Trustee by the Obligor pursuant to the said subsection (a).

Section 4.09. Maintenance of Tax-Exempt Status of Certificates.

(a) The Obligor represents and warrants that all representations, warranties, and certifications made by the Obligor in connection with the execution of the Agreement and the Trust Agreement on the Issue Date are true, correct, and complete in all material respects.

(b) Neither the Obligor nor the Corporation shall take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on any Certificate from the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. The Corporation and the Obligor shall execute such amendments hereof and supplements hereto (and shall comply with the provisions thereof) as may, in the opinion of Independent Counsel, be necessary to preserve or perfect such exclusion. The Obligor shall comply with each specific covenant in this Section 4.09, Section 4.06, Section 5.16 and Section 5.17 at all times prior to the final maturity of the Certificates (and, in the case of Section 4.06 hereof, until compliance therewith in full), unless and until there shall have been delivered to the Trustee and the Corporation an opinion of Independent Counsel to the effect that failure to comply with such covenant, either generally or to the extent stated therein, shall not adversely affect the excludability of interest on any Certificate from the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes (except as hereinbefore provided in this subsection (b)), and thereafter such covenant shall no longer be binding upon the Obligor generally or to such extent, as the case may be, anything in any other subsection of this Section 4.09 to the contrary notwithstanding. The Obligor shall seek and comply with the advice of Independent

Counsel in its compliance with the provisions of this Section.

(c) The Obligor shall, not later than the fifteenth (15th) day of the second (2nd) calendar month after the close of the calendar quarter in which Issue Date for the Certificates occurs, file with the Secretary of the Treasury the information required to be filed with respect to the Certificates pursuant to Section 149(e) of the Code. The Corporation shall furnish to the Obligor in a timely manner all information in its possession which is necessary for the Obligor to make such filing.

(d) The Obligor shall not direct or itself take any action or fail to take any action with respect to the investment of the Gross Proceeds of the Certificates or any other funds of the Obligor, including amounts received from the investment of any of the foregoing, which would result in constituting the Certificates as "arbitrage bonds" within the meaning of Section 148 of the Code or "hedge bonds" within the meaning of Section 149 of the Code.

In the event the Obligor is of the opinion that it is necessary to restrict or limit the yield on the investment of any money paid to or held by the Trustee hereunder in order to avoid classification of the Certificates as "arbitrage bonds" within the meaning of Section 148 of the Code, the Obligor may issue to the Trustee a written instrument to such effect (accompanied by appropriate written instructions), in which event the Trustee will take such action as is necessary so as to restrict or limit the yield on such investment in accordance with such instrument and instructions, irrespective of whether the Trustee shares such opinion. The Trustee may conclusively rely upon any such instructions and shall not be responsible for any loss resulting from the investment of any money held hereunder in accordance with such instructions.

(e) The County shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of the Rental Payments or the Certificates (except pursuant to Section 8.02 of the Trust Agreement), shall not establish any segregated reserve or similar fund for such purpose, and shall not prepay any Rental Payment in advance of the redemption date of an equal principal amount of Certificates, unless in each case in the opinion of Independent Counsel such action will not adversely affect the exclusion of interest on any Certificate from the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes.

(f) The Obligor shall not (and shall not direct or permit the Trustee to) invest Gross Proceeds of the Certificates in any Taxable Investment (or use Gross Proceeds of the Certificates to replace money so invested or deposit Taxable Investments allocable to the Certificates to the Property Acquisition Account, Agreement Payment Account, Reserve Account, Redemption Account, or Revenue Account or any escrow described in Section 8.02 of the Trust Agreement), at any time prior to the final maturity of the Certificates, if as a result of such investment the Yield of all Taxable Investments acquired with (or representing an investment of) Gross Proceeds of the Certificates (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Certificates. The Obligor and the Corporation shall pursue work on the Project with due diligence until completion. The Obligor shall determine or cause to be determined at its expense on each Issue Anniversary Date the Yield on the Certificates and the Yield on any Taxable Investment acquired with any Gross Proceeds and to be held by the Trustee for the Certificate Year commencing on such Issue Anniversary Date and provide such information to the Trustee. Within 30 days after the Issue Anniversary Date, the Obligor shall determine and direct the Trustee to dispose of specific Taxable Investments having a Yield higher than the Yield on the Certificates; however, such Taxable Investments need not be disposed of if such disposition would result in the realization of a loss for federal income tax purposes that exceeds the Tentative Rebate Amount at the time of such sale or disposition if a rebate to the United States pursuant to Section 4.06 of the Trust Agreement were due at such time or would result in a Prohibited Payment.

(g) The Obligor shall not take or omit to take any action which, if taken or omitted, would cause the Certificates to be "federally guaranteed" within the meaning of Section 149(b) of the Code. The Obligor shall not (nor shall it permit the Trustee to) either (i) use Gross Proceeds of the Certificates in an amount which exceeds five percent (5%) of the proceeds from the sale of the Certificates (A) to make loans which are (nor shall it permit the Agreement related thereto to become) guaranteed in whole or in part by the United States or any agency or instrumentality thereof, including any entity with statutory authority to borrow from the United States, or (B) to invest in any deposit or account in a financial institution to the extent such deposit or account is insured under federal law by the Federal Deposit Insurance Corporation, the National Credit Union Administration, or any similar federally-chartered corporation, or (ii) otherwise permit payment of principal or of interest on the Certificates to be directly or indirectly guaranteed in whole or in part by the United States



or any agency or instrumentality thereof, including any entity with statutory authority to borrow from the United States (e.g., by the investment of amounts held for the credit of the Agreement Payment Account in federally-guaranteed or federally-insured obligations). Notwithstanding the foregoing provisions of this Subsection, however, the Obligor may (and may permit the Trustee to) acquire:

- (i) Permitted Investments described in Clause (A) or (B) below, whether or not federally-guaranteed or federally-insured, to the extent such Permitted Investments are held during the respective period described in such Clause;

- (A) Taxable Investments held for the account of the Project Acquisition Account, to the extent such Taxable Investments are held during the first three years after the Issue Date for the Certificates and prior to the date on which the Project has been completed or abandoned; and

- (B) Taxable Investments held for the credit of the Reserve Account, to the extent that the value of the Reserve Fund does not exceed 10 percent of the proceeds of the Certificates after reduction by the placement agent and underwriter fees;

- (ii) Permitted Investments issued by the United States Treasury; and
- (iii) Any other Permitted Investments permitted by regulations of the United States Department of Treasury issued under Section 149(b)(3)(B)(v) of the Code.

(h) The Obligor shall not direct or instruct the Trustee to invest any Gross Proceeds of the Certificates in any Permitted Investments for which there is not an established market except obligations purchased from the United States Treasury.

(i) The Obligor and the Corporation shall not instruct or direct the Trustee to deposit in the Reserve Account any proceeds from the sale of the Certificates in excess of ten percent (10%) of the proceeds of the Certificates after reduction by the placement agent and underwriter fees.

(j) The Obligor and the Corporation shall not use or direct the use of Original Proceeds of the Certificates except in accordance with Section 4.02 and each Requisition Requesting Disbursement of Insurance Costs and Requisition

Requesting Disbursement shall be true and correct in all respects.

(k) The Obligor shall not (and shall not direct the Trustee to) invest, in any Taxable Investment having a Yield in excess of the Yield of the Certificates, any amounts on deposit in the Reserve Account in excess of \$999,100.00, at any time prior to the final maturity of the Certificates.

(End of Article IV)

## ARTICLE V

### DEFAULT; LIMITATION OF LIABILITY

Section 5.01. Events of Default. An Event of Default is the occurrence of any one or more of the following:

(a) The Obligor fails to make any Rental Payment (or any other payment) as it becomes due in accordance with the Agreement, notwithstanding the failure to receive notice therefor and the transfer of any monies from the Reserve Account to the Agreement Payment Account and such transfer shall not act to cure the failure to make any Rental Payment;

(b) The Obligor fails to perform or observe any covenant, condition, or agreement, other than as referred to in subsection 5.01(a) hereof, to be performed or observed by it under the Agreement or this Trust Agreement, and such failure is not cured within thirty (30) calendar days after written notice thereof by Trustee or such other period as is authorized under subsection 12.01(b) of the Agreement;

(c) The Trustee is notified by the Corporation that any material statement, representation, or covenant made by the Obligor in the Agreement, the Trust Agreement or in any writing ever delivered by the Obligor pursuant to the Agreement or in connection therewith is false, misleading, or erroneous in any material respect;

(d) The filing by the Obligor of a voluntary petition in bankruptcy, or failure by the Obligor promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of the Obligor to carry on its operations at the Project, or adjudication of the Obligor as a bankrupt, or assignment by the Obligor for the benefit of creditors, or the entry by the Obligor into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Obligor in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted;

(e) Any event which shall occur or any condition which shall exist the effect of which is to cause (i) more than \$100,000 of aggregate indebtedness of the Obligor to become due prior to its stated due date, and (ii) a lien to be placed on the Project or the Obligor's interest in the Project;

(f) A final judgment against the Obligor for an amount in excess of \$100,000 shall be outstanding for any period of

60 days or more from the date of its entry and shall not have been discharged in full or stayed pending appeal, and a lien is placed on the Project or the Obligor's interest in the Project; or

(g) The replenishment by the Obligor of the Reserve Account referred to in Section 6.7 of the Agreement is not accomplished as soon as reasonably and legally practicable following the receipt of notice by the Obligor from the Trustee that funds have been advanced from the Reserve Account, but in no event to exceed one (1) year after the Obligor receives such notice.

Section 5.02. Remedies on Default.

(a) Upon the occurrence of an Event of Default of which the Trustee has notice under the terms of Section 7.08 hereof, and as long as such Event of Default is continuing, the Trustee may, at its option, exercise any one or more of the following remedies:

(i) With or without terminating the Agreement or taking title to the Project pursuant to the Deed of Trust, by written notice to the Obligor, declare an amount equal to all amounts becoming due and payable under the Agreement during the Obligor's then current Fiscal Year to be immediately due and payable, whereupon the same shall become immediately due and payable;

(ii) With or without terminating the Agreement or taking title to the Project pursuant to the Deed of Trust, by written notice to the Obligor, request the Obligor to promptly surrender possession of the Project to the Trustee and permit the Trustee or any party designated by the Trustee quiet enjoyment and use of the Project;

(iii) With or without terminating the Agreement or taking title to the Project pursuant to the Deed of Trust, enter upon the Project location and take immediate possession of the Project;

(iv) Foreclose upon or lease the Project for the account of the Trustee or sublease the Project for the account of the Obligor, holding the Obligor liable for all Rental Payments and other payments due prior to the effective date of such foreclosure, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such foreclosure, lease or sublease less the costs of such foreclosure, lease or

sublease and the amounts payable by the Obligor hereunder during the then current Fiscal Year; or

(v) Exercise any other right, remedy or privilege which may be available to it under the DMS Lease Assignment Agreement, applicable laws of the State of Texas or any other applicable law or proceed by appropriate court action to enforce the terms of the Agreement or to recover damages for the breach of the Agreement or to rescind the Agreement as to any or all of the Project.

Notwithstanding any provision contained in this Section 5.02(a), in the case of an Event of Default referred to in subsection 5.01(a) hereof the Trustee shall not terminate the Agreement until amounts held by the Trustee in the Reserve Account are less than the sum of (A) principal, premium, if any, and interest payments due on the Certificates of Participation at the next succeeding Certificate Payment Date, and (B) the fees and expenses of the Trustee described in Section 7.07.

(b) No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in the Agreement and this Trust Agreement it shall not be necessary to give any notice, other than such notice as may be required in the Agreement and this Trust Agreement.

(c) No remedy herein conferred upon or reserved to Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or this Trust Agreement or now or hereafter existing at law or in equity.

(d) The Trustee in its discretion may waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon notice to the Certificate Owners of such waiver. No waiver of any default or Event of Default hereunder shall extend or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) Notwithstanding the Trustee's right to waive any Event of Default, if an Event of Default has occurred and if the Owners of not less than fifty-one percent (51%) of the aggregate principal amount of the Certificates then Outstanding so request, and if such Owners shall provide the Trustee indemnification in a form or an indemnity bond, in

each case satisfactory to the Trustee, for any liability or expense it may incur in carrying out its powers as set forth in Section 5.07 hereof, the Trustee shall exercise one or more of the powers conferred by this Section 5.02 which the Trustee, being advised by its counsel, shall deem most expedient in the interest of the Owners of the Certificates.

(f) Notwithstanding any other provision of this Trust Agreement, the Trustee, upon an Event of Default, shall not acquire title to the Project pursuant to the Deed of Trust until (i) notified to do so by the Owners of not less than fifty-one percent (51%) in aggregate principal amount of all Certificates then outstanding, and (ii) indemnified in the manner provided for by Section 5.07 hereof.

Section 5.03. Complete Termination of Agreement. If the Agreement is terminated in the event of (i) a nonappropriation pursuant to the Agreement, or (ii) an Event of Default under this Trust Agreement, notwithstanding any provision hereof to the contrary, all amounts in the Property Acquisition Account, the Agreement Payment Account and the Reserve Account, less the fees and expenses of the Trustee due in accordance with Section 7.07 hereof, shall be transferred to the Redemption Account. All Certificates shall be paid pursuant to the provisions of this Trust Agreement relating to redemption of Certificates. If there are not sufficient funds available to pay in full all interest and principal then due on the Outstanding Certificates, the Trustee shall apply all available funds first to the payment of the fees and expenses of the Trustee due in accordance with Section 7.07 hereof and then to the payment of all interest due with respect to such Certificates, pro rata if necessary, according to the total interest payment and second to the payment of principal of such Certificates, pro rata if necessary.

Section 5.04. Notice of Default. Obligor and Corporation shall give written notice by registered or certified mail to the Trustee as soon as practicable, but in no event later than five (5) Business Days after they gain knowledge of any Event of Default other than one referred to in subsection 5.01(a) hereof. The Trustee shall give written notice by registered or certified mail or by personal delivery to the Corporation and the Obligor as soon as practicable, but in no event later than five (5) Business Days after the Obligor's failure to pay any Rental Payment when due (without regard to any grace period) or any other failure by the Obligor to comply with the provisions of this Trust Agreement or the Agreement. If such notice relates to a failure to pay an obligated payment or transfer, it shall specify the amount. If such notice relates to a matter other than a failure to pay an obligated payment or transfer, it shall specify the manner in which the Obligor has failed to comply with the provisions of the Agreement and demand such compliance, if applicable.

Section 5.05. [Deleted]

Section 5.06. Initiation of Remedies. All rights of action hereunder may be enforced by the Trustee without the possession of any of the Certificates or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee may be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants the Owner of any Certificates. Any recovery of judgment shall be for the ratable benefit of the Owners of the Certificates then Outstanding.

Section 5.07. Rights and Remedies of Certificate Owners. No Owner of any Certificate shall have any right to institute any suit, action or proceeding for the enforcement of this Trust Agreement, the execution of any trust hereof or any other remedy hereunder unless: (i) either (A) the Obligor has failed to make a Rental Payment when due and such failure constitutes an Event of Default under this Trust Agreement and the amounts held by the Trustee in the Reserve Account are less than the sum of (x) principal, premium, if any, and interest payments due on the Certificates of Participation at the next succeeding Certificate Payment Date, and (y) the fees and expenses of the Trustee described in Section 7.07, or (B) in the event the Obligor has not so failed to make a Rental Payment when due, the Trustee has failed to make a Certificate Payment when due; (ii) the Owners of not less than fifty-one percent (51%) in the aggregate principal amount of Certificates then Outstanding shall have made written request to the Trustee and shall have offered the Trustee reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (iii) such Owners have offered the Trustee indemnification in a form or an indemnity bond in an amount and in each case satisfactory to it for any liability and expense it might incur in carrying out the aforementioned request; and (iv) the Trustee has thereafter failed or refused to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its, his or their own name or names. Such request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Trust Agreement and to the initiation of any action or cause of action for the enforcement of this Trust Agreement; however, the Trustee may not, as condition precedent to the execution of the powers and trusts hereunder, request indemnification for liability arising out of the Trustee's grossly negligent or willful action, misconduct or failure to act. No one or more of the Owners of the Certificates shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Trust Agreement by its, his or their action or to enforce any right hereunder except in the manner herein provided, and proceedings shall be instituted, had and maintained in the manner herein provided and for the ratable benefit of the

Owners of all Certificates then Outstanding. Nothing in this Trust Agreement shall, however, affect or impair the right of any Certificate Owner to enforce the payment of the principal of and interest on any Certificate at and after the maturity thereof or the obligation of the Trustee to pay the principal of and premium, if any, and interest on each of the Certificates issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner provided in said Certificates.

Section 5.08. Termination of Proceedings. In the event the Trustee shall have proceeded to enforce any right under this Trust Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, the Obligor, the Corporation and the Trustee shall be restored to their former positions and rights hereunder and under the Agreement, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 5.09. Waivers of Events of Default. The Trustee shall waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon the written request of the Owners of fifty-one percent (51%) in aggregate principal amount of all Certificates then Outstanding; however, there shall not be waived (a) any Event of Default in the payment of the principal of any Outstanding Certificates at the date of maturity or redemption specified therein, or (b) any default in the payment when due of the interest on any such Certificates unless, prior to such Waiver or rescission or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, all arrears of payments of interest, or all arrears of payments of principal as the case may be, and all expenses of the Trustee in connection with such default shall have been paid. In case of any such waiver or rescission or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then the Obligor, the Corporation, the Trustee and the Certificate Owners shall be restored to their former positions and rights hereunder and under the Agreement, respectively, but no such waiver or rescission shall extend to any subsequent or other default or impair any right consequent thereon.

Section 5.10. No Obligation with Respect to Performance by Trustee. The Corporation and the Obligor shall have no obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

Section 5.11. No Liability to Owners for Rental Payments or Covenants. Neither the Corporation nor the Trustee shall have any obligation or liability to the Owners with respect to the



payment of Rental Payments by the Obligor when due or, except as expressly provided herein, with respect to the performance by the Obligor of any other covenant made by it in the Agreement.

Section 5.12. No Responsibility for Sufficiency. The Trustee shall not be responsible for the legal sufficiency of the Agreement, the assignment made to it of the right to receive Rental Payments pursuant to the Agreement or the value of the Project; the foregoing does not reduce or eliminate any of the Trustee's specified responsibilities or obligations under this Trust Agreement or the DMS Lease Assignment Agreement.

Section 5.13. Liability of Trustee. The Trustee shall not be liable to anyone for any delay in the delivery of any property to the Obligor, for any default on the part of any supplier, manufacturer or builder or for any defect in any of the property or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, shall be entitled to rely conclusively upon the advice of counsel and shall be answerable to the Obligor for only its own negligence or willful misconduct and shall be answerable to any other person or entity for only its own gross negligence or willful misconduct and not for any negligence or willful misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution (except for its own execution) or validity of this Trust Agreement or of the Certificates or for any mistake of fact or law. IN NO EVENT SHALL THE TRUSTEE BE LIABLE TO ANY PARTY OR THIRD PARTY FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOSS OF BUSINESS ARISING UNDER OR IN CONNECTION WITH THIS TRUST AGREEMENT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION. THE TRUSTEE SHALL NOT BE RESPONSIBLE OR LIABLE TO ANY CERTIFICATE OWNER TO PAY ANY INTEREST, PRINCIPAL OR PREMIUM DUE OR TO BECOME DUE ON THE CERTIFICATES EXCEPT OUT OF THE TRUST FUNDS, AS DEFINED AND ESTABLISHED IN THE TRUST AGREEMENT, AVAILABLE TO THE TRUSTEE.

Section 5.14. Indemnification of Trustee. The Corporation shall and hereby agrees to indemnify and save the Trustee, its officers, directors, attorneys and employees harmless from and against all costs, expenses, suits, judgments, actions, claims, losses, damages and liabilities whatsoever, including consequential damages, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgments and legal fees and expenses, directly or indirectly arising out of (i) the use, maintenance, condition or management of, or from any work or thing done in connection with, the Project by the Obligor, (ii)

any act of negligence of the Obligor or the Corporation or of any of their officers, agents, contractors, servants, employees, licensees or invitees in connection with the Project or the Agreement, (iii) the authorization of payment of costs by the Corporation or the Obligor, (iv) any written statement or certificate relied upon by the Trustee which results in liability to any third party or causes the Certificates to become "arbitrage bonds," or (v) the repossession, management, sale or lease of the Project by the Trustee pursuant to the terms of Section 5.02 hereof. No indemnification will be made under this Section 5.14 or elsewhere in this Trust Agreement for such claims, losses or damages, including consequential damages and legal fees and expenses, arising solely from the gross negligence or willful misconduct under this Trust Agreement by the Trustee, its officers, agents, employees, successors or assigns.

Section 5.15. Adequacy of Rental Payments. The Corporation and the Obligor agree and represent that the Rental Payments due under the Agreement will be sufficient in amount and in time to pay the principal and interest on the Certificates as the same become due.

Section 5.16. Corporation and Obligor to Perform Agreement. The Corporation and the Obligor each covenants and agrees with the Trustee, acting on behalf of the Certificate Owners, to perform all obligations and duties imposed on each of them under the Agreement and to enforce such Agreement in accordance with its terms.

Section 5.17. Effect of Modified Management Agreement or New Management Contract. Except as specifically provided in the Management Agreement, no modification or renewal of the Management Agreement or any new management contract entered into between the Obligor and the Manager shall be effective unless the Obligor shall have first obtained the opinion of Independent Counsel that the Management Agreement as modified or amended or the new management contract will not adversely affect any exclusion from gross income of interest on any Certificate under the Code.

(End of Article V)

## ARTICLE VI

### REDEMPTION OF CERTIFICATES

#### Section 6.01. Terms of Redemption.

(a) The Certificates shall be subject to redemption prior to final maturity as a whole, but not in part, at the redemption price thereof determined in accordance with the provisions of this Article VI, together with accrued interest to the date fixed for redemption, from the proceeds of the sale or other disposition of the Project pursuant to Section 5.02 hereof. If all or a portion of the Project has been leased or subleased pursuant to subsection 5.02(a)(iv) hereof and if payments with respect to such lease or sublease will be received by the Trustee after the date fixed for redemption, the Owners of fifty one percent (51%) of the aggregate principal amount of the Certificates then Outstanding shall determine whether the Trustee's interest in such lease or sublease will be liquidated prior to redemption or whether the Trustee shall retain its interest in the lease or sublease and distribute the payments received pursuant thereto on the Certificate Payment Dates in the proportion the unamortized principal of each Outstanding Certificate bears to the total unamortized principal of all Outstanding Certificates and upon failure to so determine and direct the Trustee, the Trustee shall not liquidate the Trustee's interest in such lease or sublease. In the event redemption is made pursuant to this subsection 6.01(a), all Certificates shall be called for redemption as soon as reasonably practicable, and, if there are not sufficient funds available to pay in full all interest and principal then due on the Certificates then Outstanding, the Trustee shall apply all available funds, after deduction of the fees and expenses of Trustee described in Section 7.07 hereof, first to the payment of all interest due with respect to such Certificates, pro rata if necessary, according to the total interest payment due, and second to the payment of the principal of such Certificates, pro rata if necessary.

(b) On the first succeeding Certificate Payment Date subsequent to the filing of a petition in bankruptcy by or against the Corporation (if the Corporation consented to or acquiesced in such filing) and on the first succeeding Certificate Payment Date subsequent to the expiration of sixty (60) days after the filing of a petition in bankruptcy against the Corporation, if the petition is not dismissed within such sixty (60) day period, and on June 15, 2000 or on any Certificate Payment Date thereafter, the Certificates shall be subject to redemption prior to their scheduled maturity, in whole, but not in part, if the Obligor causes such redemption by exercising its purchase option under the

Agreement, at a premium through December 15, 2004 and at par thereafter in accordance with and at a redemption price equal to the sum of: (i) the outstanding principal listed on Exhibit "A" to the Form of the Certificate which is Exhibit "B" hereto for the June 15 or December 15 (as the case may be) Certificate Payment Date on which such redemption is to occur, plus (ii) the Total Cumulative Semiannual Rental Payment Amount listed on Exhibit "A" to the Form of the Certificate which is Exhibit "B" hereto for the June 15 or December 15 (as the case may be) Certificate Payment Date on which such redemption is to occur, plus (iii) a premium as shown on Exhibit "A" to the Form of the Certificate which is Exhibit "B" hereto, from amounts paid by the Obligor upon the payment of the Concluding Payment pursuant to the terms of the Agreement.

(c) The Certificates shall be subject to redemption prior to their final maturity, on the next succeeding Certificate Payment Date following an event described in this subsection 6.01(c), in whole, but not in part, at par in accordance with and at a redemption price equal to the unpaid principal portions of the Rental Payments coming due during the remainder of the Lease Term, in the event of a casualty loss or condemnation of the Project and an election by the Obligor to purchase the Project pursuant to Article VIII of the Agreement.

(d) The Certificates shall be subject to redemption from funds in the Property Acquisition Account prior to their final maturity, at par, in whole or in part, (i) if all or a part of the Improvements are deleted from the Agreement pursuant to the provisions of Section 3.2(c) of the Agreement, or (ii) if the amount on deposit in the Property Acquisition Account after final disbursements in respect to the payment of all Financed Costs as provided for by Section 4.02 hereof and otherwise as provided for by Article IV as evidenced by the fully executed Acceptance Certificate exceeds \$100,000. Certificates to be so redeemed shall be redeemed as soon as possible on a regular Certificate Payment Date but in no event later than on December 15, 1992. In the case of a redemption pursuant to this subsection 6.01(d), the principal amount to be redeemed shall be equal to the total amount of funds in the Property Acquisition Account on October 15, 1992, in the case of a redemption resulting from an event described in clause (i) of the first sentence of this Section 6.01(d), and on the date the final disbursement is made in the case of a redemption resulting from an event described in clause (ii) of the first sentence of this Section 6.01(d), in each case rounded down to the next integral multiple of \$100,000 (the "Base Amount"). The Base Amount shall be transferred from the Property Acquisition Account to the Redemption Account; such

transfer shall be made on or before the Business Day immediately preceding the redemption. Except as provided below, the Certificates will be redeemable only in multiples of \$100,000. In order to achieve a redemption pursuant to this subsection 6.01(d), at least one Certificate held by each Owner may be partially redeemed in an amount less than \$100,000. In the case of a Certificate in a denomination greater than \$100,000, the Trustee shall treat such Certificate as representing such number of separate Certificates each of the denomination of \$100,000 as is obtained by dividing the actual principal amount of such Certificate by \$100,000. Notice of redemption will be provided in accordance with the terms of the first and third paragraphs of Section 6.02 hereof to the Owners of the Certificates selected for redemption.

(e) The Certificates shall be subject to redemption prior to their final maturity, on the next succeeding Certificate Payment Date after a Determination of Taxability as set forth in Section 6.8 of the Agreement, in whole, but not in part, at 108% of the unpaid principal balance of the Certificates then Outstanding, if the Obligor causes such redemption by exercising its purchase option under the Agreement and pays the amount required by the Agreement.

(f) In the case of a mandatory redemption, the particular Certificates to be redeemed shall be selected not more than forty (40) calendar days prior to the redemption date by the Trustee, from the then Outstanding Certificates, by lot or such other customary method as the Trustee shall deem fair and appropriate.

Section 6.02. Notice of Redemption. When redemption is authorized or required pursuant to this Trust Agreement, the Trustee shall issue the notice of redemption to the Owners of Outstanding Certificates. Each notice of redemption shall set forth the redemption date, the redemption price and the place of payment. Each notice shall further state that on the date specified there shall become due and payable upon the Certificates to be redeemed the principal and premium (if any) thereof, together with interest accrued to said date, and that from and after such date interest thereon shall cease to accrue and be payable on the principal amount of the Certificates to be redeemed.

The Trustee shall issue a notice of redemption when an amount equal to the amount necessary to pay the principal, premium (if any) and interest due on the Certificates to be redeemed is on deposit in the Trust Funds. The following amounts are deemed to be on deposit in the Trust Funds and available to pay the redemption price: (i) amounts to be transferred to the Redemption Account from the Property Acquisition Account, Agreement Payment Account and Reserve Account pursuant to Section 4.05

hereof; and (ii) interest or income accrued and payable on or before the redemption date on amounts invested in Permitted Investments, less the fees and expenses of the Trustee described in Section 7.07 hereof.

Each notice of redemption shall be mailed first class postage prepaid, to the respective Owners of any Certificates designated for redemption at their addresses appearing on the Certificate Register, as soon as practicable but not less than twenty (20) calendar days nor more than forty (40) calendar days prior to the redemption date.

Section 6.03. Effect of Redemption. When notice of redemption has been duly given as aforesaid, the Certificates called for redemption shall, on the date designated in such notice, become due and payable at the amount specified in such notice. From and after the date designated for redemption, interest on the Certificates called shall cease to accrue, said Certificates shall cease to be entitled to any benefit or security under this Trust Agreement, and the owners of said Certificates shall have no rights in respect thereof except to receive payment of the specified amount. The Trustee shall, upon surrender for payment of any of said Certificates, pay such Certificates at the specified amount as aforesaid. If the specified amount shall not be available on the date designated. Certificates called for redemption but not redeemed shall continue to bear interest until paid at the same rates as they would have borne had they not been so called. In the event of a partial redemption, any Certificate representing the portion of the Certificate that is not called for redemption may be surrendered, for transfer and exchange, to the Trustee, and a new Certificate shall be issued in the amount of the Certificate not so called for redemption.

Except as otherwise provided in this Section 6.03, all Certificates redeemed pursuant to the provisions of this Article VI shall be cancelled upon surrender thereof, and no Certificates shall be issued in place thereof. All funds held by or on behalf of the Trustee for the redemption of particular Certificates shall be held in trust, subject to the applicable escheat laws of the State of Texas, for the account of the Owners of the Certificates to be redeemed.

(End of Article VI)

## ARTICLE VII

### THE TRUSTEE

Section 7.01. Employment of Trustee. In consideration of the recitals hereinabove set forth and for other valuable consideration, the Corporation hereby appoints the Trustee to: (a) prepare, execute and deliver the Certificates; (b) receive the proceeds from the sale of the Certificates; and (c) apply and disburse the proceeds from the sale of the Certificates and the payments received hereunder as provided for herein; and (d) to receive all payments made pursuant to the Agreement. The Obligor, to the extent provided in this Trust Agreement, and the Corporation hereby appoint the Trustee to perform all the other duties and obligations of the Trustee as expressly provided for herein. The Trustee shall not be required to give any bond or surety in respect of the execution of the trust and powers given to it by this Trust Agreement.

Section 7.02. Acceptance of Appointment. The Trustee hereby accepts the appointment pursuant to Section 7.01 above subject to the terms and conditions of this Trust Agreement. Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Trust Agreement and no implied covenants or obligations shall be read into this Trust Agreement against the Trustee.

#### Section 7.03. Right and Duties of Trustee.

(a) By executing and delivering this Trust Agreement, the Trustee accepts the duties and obligations of the Trustee expressly provided in this Trust Agreement, but only upon the terms and conditions set forth in this Trust Agreement.

(b) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice (electronic, telephonic, written or otherwise), request, direction, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(c) Any request or direction of the Obligor or the Corporation mentioned herein shall be sufficiently evidenced in writing and signed by an Authorized Officer.

(d) Whenever in the administration of this Trust Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other

evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon a certificate of an Authorized Officer of the Obligor or the Corporation.

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its sole discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Obligor and the Corporation personally or by agent or attorney all at the expense of the Obligor.

Section 7.04. Removal and Resignation. A bank or trust company authorized to provide corporate trust services may be substituted to act as successor trustee under this Trust Agreement, upon the joint written request of the Obligor and the Owners of fifty-one percent (51%) in aggregate principal amount of Outstanding Certificates; provided, however, that if the Obligor shall then be in default hereunder pursuant to Article V hereof, then a successor trustee may be appointed upon the written request of the Owners of fifty-one percent (51%) in aggregate principal amount of Outstanding Certificates. Such substitution shall not be deemed to affect the rights or obligations of the Owners. Upon any such substitution, the Trustee agrees to assign to such substituted Trustee its rights under this Trust Agreement and the DMS Lease Assignment Agreement and deliver all documents and funds held in connection with this Trust Agreement to such substituted Trustee, less the fees and expenses of the Trustee due in accordance with Section 7.07 hereof. Any such successor shall have capital and surplus exclusive of borrowed capital aggregating at least One Hundred Million Dollars (\$100,000,000) and shall be subject to examination or supervision by a federal or state banking authority. The Trustee or any successor may at any time resign by giving mailed notice to all Owners, the Obligor and the Corporation of its intention to resign and of the proposed date of resignation, which shall be a date not less than thirty (30) calendar days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and the appointment of a successor Trustee shall have been or is approved in writing by the Owners of fifty-one percent (51%) in aggregate principal amount of Outstanding Certificates. In the event that a successor Trustee is not appointed within thirty (30) calendar days after such notice is deposited in the United States mail, the Corporation, the Obligor or the resigning Trustee may petition the appropriate court having jurisdiction to appoint a successor Trustee. No resignation or removal of the Trustee and appointment of a successor Trustee



shall become effective until acceptance of appointment by the successor Trustee.

Section 7.05. Appointment of Agent. The Trustee may appoint an agent to exercise any of the powers, rights or remedies granted to the Trustee under this Trust Agreement and to hold title to property or to take any other action which may be desirable or necessary.

Section 7.06. Merger or Consolidation of Trustee. Any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor Trustee, provided that such corporation, if not an affiliate of the Trustee, shall have a capital and surplus aggregating at least \$100,000,000, shall be the successor Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 7.07. Trustee Compensation. The Trustee shall be entitled to payment by the Obligor, from the Trust Estate as provided in subsections 4.04(c), 4.08(c) and 4.08(d) and by the terms hereof, for Trustee's reasonable fees and expenses based upon Trustee's Fee Schedule attached hereto as Exhibit "E," and for Trustee's reasonable ordinary and extraordinary services (including all advances, counsel fees and other ordinary or extraordinary expenses). The Trustee shall periodically and at least once during each year provide written notification to the Obligor and the Corporation describing such fees and expenses paid to the Trustee since the date of the last notification with respect to the payment of fees and expenses.

Section 7.08. Trustee Notice. The Trustee shall be required to take notice of any Event of Default hereunder arising from failure by the Obligor to pay Rental Payments or replenish the Reserve Account as required hereunder. Unless the Trustee shall be specifically notified in writing of any other default by the Obligor, the Corporation or the Owners of at least five percent (5%) in aggregate principal amount of the Certificates then Outstanding, the Trustee shall not be required to take notice or be deemed to have notice of any other Event of Default hereunder. Further, the Trustee shall not be deemed to have notice of any other events or occurrences under the Agreement unless it shall have received actual notice thereof from the Obligor, the Corporation or the Owners of at least five percent (5%) in aggregate principal amount of the Certificates then Outstanding.

Section 7.09 Compliance with Environmental Law. The Trustee shall have the power to:

(a) Inspect the Project for the purpose of determining compliance with any environmental laws affecting the Project and to respond to any actual or threatened violation of any environmental law affecting the Project;

(b) Take any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting the Project, either before or after the initiation of an enforcement action by any governmental body;

(c) Refuse to accept property in trust if the Trustee determines, based upon a report of an environmental science engineering firm, acceptable to the Trustee, that such property either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving a hazardous substance which could result in liability to the trust created by this Trust Agreement, the Trustee or otherwise impair the value of the Trust Funds;

(d) Settle or compromise at any time any and all claims against the trust created by this Trust Agreement or the Trustee (either in its corporate capacity, or in the personal capacity of the individuals serving as trust officers on behalf of the Trustee), which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting the Project or any other property held in trust with respect to or in connection with the Project;

(e) Disclaim any power granted by this Trust Agreement, the Agreement, the Deed of Trust, the DMS Lease Assignment Agreement or any document, statute, or rule of law which, in the sole discretion of the Trustee as advised by its counsel, may cause the Trustee to incur corporate or personal liability under any environmental law;

(f) Resign as Trustee, if the Trustee reasonably believes that there is or may be a conflict of interest between the Trustee in its capacity as Trustee and in its corporate or individual capacity because of potential claims or liabilities which may be asserted against the Trustee on behalf of the trust created by this Trust Agreement because of the type or condition of the Project or other property held in trust with respect to or in connection with the Project;

(g) For purposes of this Section 7.09, the term "environmental law" means any federal, state or local law, rule, regulation or ordinance relating to the protection of the environment or human health. For purposes of this

Section 7.09, the term "hazardous substance" means any substance defined as hazardous or toxic or otherwise regulated by any environmental law. The Trustee shall be entitled to charge the cost of any inspection, environmental audit, review, abatement, response, cleanup or remedial action (including attorney's fees), authorized in this Section 7.09, against the moneys held in the Reserve Account. The Trustee shall not be personally liable to the Corporation, the Obligor or the Owners of the Certificates or any other person for any decrease in value of the Project or the Reserve Account by reason of the Trustee's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the Trustee of property or a failure by the Trustee to inspect property shall be deemed to create any inference as to whether or not there is or may be any liability under any environmental law with respect to such property.

(End of Article VII)

## ARTICLE VIII

### AMENDMENT; DEFEASANCE; MISCELLANEOUS PROVISIONS

Section 8.01. Amendment. The Obligor, the Corporation and the Trustee may, without the consent of or notice to any of the Certificate Owners, amend this Trust Agreement or other instruments evidencing the existence of a lien as shall not be inconsistent with the terms and provisions hereof for any one of the following purposes:

(a) To cure any ambiguity, inconsistency or formal defect or omission in this Trust Agreement;

(b) To grant to or confer upon the Trustee for the benefit of the Certificate Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Certificate Owners or the Trustee or either of them;

(c) To subject additional revenues to the lien and pledge of this Trust Agreement;

(d) To add to the covenants and agreements contained in this Trust Agreement other covenants and agreements thereafter to be observed for the protection of the Certificate Owners or to surrender or limit any right, power or authority herein reserved to or conferred upon the Trustee; or

(e) To evidence any succession by the Obligor, the Trustee or the Corporation and the assumption by such successor of the requirements, covenants and agreements of the Obligor, the Trustee or the Corporation in this Trust Agreement, the Agreement and the Certificates.

Exclusive of the aforementioned types of amendment and subject to the terms and provisions contained in this Section 8.01, and not otherwise, the Owners of not less than fifty-one percent (51%) in aggregate principal amount of the Certificates then Outstanding shall have the right, from time to time, anything contained in this Trust Agreement to the contrary notwithstanding, to consent to and approve the execution by the Obligor, the Corporation and the Trustee of such other amendments as shall be deemed necessary and desirable by the Obligor, the Corporation or the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Trust Agreement or in any amendment thereto, provided, however, that nothing in this Section 8.01 shall permit or be construed as permitting: (i) without the consent of each Certificate Owner so affected, an extension of the maturity of the principal of or the interest on any Certificate

issued hereunder, a reduction in the principal amount of any Certificate or a reduction in the rate of premium, if any, or interest thereon; (ii) without the consent of the Owners of all of the Certificates then Outstanding, a privilege or priority of any Certificate over any other Certificate or a reduction in the aggregate principal amount of the Certificates required for consent to such amendment; (iii) without the consent of the Owners of all of the Certificates then Outstanding, creation of any prior or parity liens on the funds held by the Trustee for payment of the Certificates; (iv) without the consent of the Owners of all of the Certificates then Outstanding, any amendment which would adversely affect any exclusion from gross income of interest on any Certificate under the Code; or (v) any amendment of the Trust Agreement without the consent of each Certificate Owner or an opinion of Independent Counsel that such amendment will not adversely affect any exclusion from gross income of interest on any Certificate under the Code. Except as provided in the preceding sentence, no amendment may be made to the Trust Agreement, the Agreement or, except as specifically provided in the Management Agreement, the Management Agreement or any subsequent management agreement without the opinion of Independent Counsel that such amendment would not adversely affect any exclusion from gross income of interest on any Certificate under the Code.

The Trustee, without the consent of the Owners of not less than a majority in aggregate principal amount of the Certificates then outstanding, may not consent to any amendment to the Agreement. Provided, however, that the Trustee may, without the consent of or notice to any of the Certificate Owners, consent to an amendment to the Agreement for any one of the following purposes:

(i) To cure any ambiguity, inconsistency or formal defect or omission in the Agreement;

(ii) To grant to or confer upon the Corporation any additional rights, remedies, powers or authority that may lawfully granted to or conferred upon the Corporation;

(iii) To increase the amount of Rental Payments to be paid by the Obligor;

(iv) To add to the covenants and agreements contained in the Agreement other covenants and agreements thereafter to be observed by the Obligor for the protection and benefit of the Corporation; and

(v) To evidence any succession of the Obligor or the Corporation and the assumption by such successor of the requirements, covenants and agreements of the Obligor or the Corporation in the Agreement.

No amendment to the Agreement shall be consented to if the amendment would result (i) in an extension of the maturity of the principal of or the interest on any Certificate issued hereunder or a reduction in the principal amount or premium, if any, of any Certificate or a reduction in the rate of interest thereon unless each Certificate Owner so affected consents; or (ii) in a privilege or priority of any Certificate over any other Certificate or a reduction in the aggregate principal amount of the Certificates required for consent to such amendment, unless the Owners of all the Certificates then Outstanding so consent.

If at any time an amendment shall be proposed for any of the purposes of this Section 8.01 requiring the approval of the Certificate Owners, the Trustee shall, upon being indemnified in a form or by receipt of an indemnity bond in each case satisfactory to it with respect to expenses, notify the Owners of all Outstanding Certificates of the proposed amendment in the manner provided by Section 8.05 hereof. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Certificate Owners. If, within one hundred twenty (120) calendar days after mailing of the notice, the requisite number of Owners of the Outstanding Certificates at the time notice of such amendment is given shall have consented to and approved the execution thereof as herein provided, no Owner of any Certificate shall have any right to object to any of the terms and provisions contained therein or the operation thereof, to question in any manner the propriety of the execution thereof or to enjoin or restrain the Trustee or the Corporation from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, this Trust Agreement or the Agreement shall be and is deemed to be modified and amended in accordance with such amendment.

Section 8.02. Defeasance. In the event the Certificates delivered pursuant hereto shall become due and payable in accordance with their terms and the whole amount of the principal, premium, if any, and interest so due and payable upon all of the Certificates shall be paid or in the event there has been deposited with the Trustee, by way of book-entry delivery or actual deposit, cash or noncallable securities of the types listed in subsection (i) of the definition of Permitted Investments in an amount sufficient (together with interest earnings thereon) to provide for payment of the whole amount of the principal, premium, if any, and interest when due and payable upon all of the Certificates and there has been filed with the Trustee a certificate of an independent certified public accountant acceptable to the Trustee to the effect that such deposit will be sufficient to cause the said whole amount to be paid when due until all the Certificates have been paid, and if in either such event all administrative expenses and amounts due or to become due hereunder shall have been paid or provided for, and the Trustee shall

have received the opinion of Independent Counsel in a form suitable to Trustee that defeasance will not adversely effect the exclusion from gross income of interest on any Certificate under the Code, then and in either such event the right, title and interest of the Trustee and the Corporation under this Trust Agreement shall thereupon cease, terminate and become void, and the Trustee shall assign and transfer to or upon the order of the Obligor all property (in excess of the amounts required for the foregoing) then held by the Trustee (including the Agreement and all payments thereunder and all balances in any fund or account created under this Trust Agreement) and shall execute such documents as may be reasonably required by the Obligor in this regard.

Section 8.03. Recording and Filing. The Obligor shall be responsible for the recording and filing of continuation statements or of any supplemental instruments or documents of further assurance as may be required by law in order to maintain perfection of any security interests created by the Agreement.

Section 8.04. Trustee to Keep Records. The Trustee shall keep a copy of this Trust Agreement and books and records of all funds received and disbursed under this Trust Agreement, which shall be available for inspection upon reasonable notice by the Corporation, the Obligor and the Owners of at least ten percent (10%) in aggregate principal amount of the Certificates then Outstanding at any time during regular business hours.

Section 8.05. Notices. All notices to be given under this Trust Agreement shall be made in writing and personally delivered or mailed via U.S. mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties in writing from time to time. Any such notice shall be deemed to have been received when personally delivered or, if mailed, three (3) calendar days after deposit in the United States mail, with postage fully prepaid. The Trustee may conclusively rely upon a notice given to it by any party who the Trustee reasonably believes is authorized to give such notice.

Addresses for Notices:

TO: Corporation

Diversified Municipal Services of Texas, Inc.  
132 Ulen Blvd.  
Lebanon, Indiana 46052  
ATTN: H. Joseph Vaughn, President

TO: Trustee

NCNB Texas National Bank  
Corporate Trust Department  
P. O. Box 2518  
700 Louisiana, 32nd Floor  
Houston, Texas 77252-2518  
(77002 for hand-delivery)  
ATTN: J. Douglas McDade

TO: Obligor

Newton County, Texas  
Newton County Courthouse  
Highway 190  
Newton, Texas 75966  
ATTN: County Judge Lee Roy Fillyaw

TO: Manager

Texas Detention Management, Inc.  
4120 Southwest Freeway, Suite 230  
Houston, Texas 77027

Section 8.06. Applicable Law. This Trust Agreement shall be construed and governed in accordance with the State Laws (exclusive of conflicts of law principles) and will, to the maximum extent practicable, be deemed to call for performance in Harris County, Texas. Courts within the State shall have jurisdiction over any and all disputes between the parties hereto, whether in law or equity, including, without limitation, any and all disputes arising out of or relating to this Trust Agreement. The parties hereby consent to and agree to submit to the jurisdiction of such courts. Venue in any dispute whether in federal or state court shall be laid in Harris County, Texas.

Section 8.07. Severability. Any provision of this Trust Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition and shall not invalidate the remainder of this Trust Agreement. Instead, the entire Trust Agreement will be construed as if not containing the particular invalid, unenforceable or prohibited provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Trust Agreement is determined to be invalid, unenforceable or prohibited, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.



Section 8.08. Binding on Successors. This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 8.09. Headings. Headings preceding the text of the several Articles and Sections hereof, and the table of contents, are solely for convenience of references and shall not constitute a part of this Trust Agreement or affect its meaning, construction or effect.

Section 8.10. Execution in Counterparts. This Trust Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Trust Agreement shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

Section 8.11. Complete Agreement. This Trust Agreement supersedes and takes the place of any and all previous trust agreements entered into among the parties hereto with respect to the subject matter hereof.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement.

(End of Article VIII)

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed and attested this Trust Agreement by their officers thereunto duly authorized as of the date and year first written above.

ATTEST:

NEWTON COUNTY, TEXAS,  
as Obligor

By: \_\_\_\_\_  
Melba Canty,  
County Clerk

By: \_\_\_\_\_  
Lee Roy Fillyaw,  
County Judge

DIVERSIFIED MUNICIPAL SERVICES OF  
TEXAS, INC., a Texas corporation,  
as Corporation

By: \_\_\_\_\_  
H. Joseph Vaughn,  
President

NCNB TEXAS NATIONAL BANK,  
as Trustee

By: \_\_\_\_\_  
J. Douglas McDade,  
Vice President and Trust Officer

STATE OF TEXAS           §  
                                  §  
COUNTY OF \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_, 1990, before me, a Notary Public in and for said County, personally appeared Lee Roy Fillyaw, County Judge of the County of Newton, Texas known to me to be the person whose name is subscribed to the within Trust Agreement, and acknowledged to me that he executed the same on behalf of such County.

(SEAL)

\_\_\_\_\_  
Notary Public State of Texas

\_\_\_\_\_  
Notary Named Typed or Printed

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
                                  §  
COUNTY OF \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_, 1990, before me, a Notary Public in for said County, personally appeared H. Joseph Vaughn, the President of Diversified Municipal Services of Texas, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the within Trust Agreement, and acknowledged to me that he executed the same on behalf of such corporation.

(SEAL)

\_\_\_\_\_  
Notary Public State of \_\_\_\_\_

\_\_\_\_\_  
Notary Named Typed or Printed

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS            §  
                                  §  
COUNTY OF \_\_\_\_\_    §

On this \_\_\_\_\_ day of \_\_\_\_\_, 1990, before me, a Notary Public in and or said County, personally appeared J. Douglas McDade, \_\_\_\_\_ Vice President and Trust Officer of NCNB Texas National Bank, a national banking association known to me to be the person whose name is subscribed to the within Trust Agreement, and acknowledged to me that he executed the same on behalf of such national association.

(SEAL)

\_\_\_\_\_  
Notary Public State of Texas

\_\_\_\_\_  
Notary Named Typed or Printed

My Commission Expires: \_\_\_\_\_

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EXHIBIT "A" TO TRUST AGREEMENT

(FORM OF)

REQUEST FOR EXECUTION AND  
DELIVERY OF  
CERTIFICATES OF PARTICIPATION

DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC. (the "Corporation") hereby authorizes and requests NCNB TEXAS NATIONAL BANK (the "Trustee"), as trustee under a Trust Agreement Relating to a Detention Facility Acquisition Project dated as of June 15, 1990 by and among Newton County, Texas, the Corporation and the Trustee, to prepare, authenticate and deliver the following Certificates of Participation pursuant to said Trust Agreement:

CERTIFICATES OF PARTICIPATION

<u>Certificate Number</u>	<u>Name, address and Taxpayer identifi- cation number of Registered Owner</u>	<u>Final Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
		June 15, 2011	\$10,300,000	9.375%

Dated: \_\_\_\_\_, 1990

DIVERSIFIED MUNICIPAL SERVICES  
OF TEXAS, INC.

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

Authorization and request received this \_\_\_\_ day of \_\_\_\_\_, 1990

NCNB TEXAS NATIONAL BANK

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

EXHIBIT "B" TO TRUST AGREEMENT  
(FORM OF CERTIFICATE OF PARTICIPATION)

THE PRINCIPAL SUM OF THIS CERTIFICATE IS PAYABLE IN INSTALLMENTS AS SET FORTH HEREIN. ACCORDINGLY, THE OUTSTANDING PRINCIPAL AMOUNT OF THIS CERTIFICATE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN ON THE FACE HEREOF.

THE OBLIGATION OF THE COUNTY TO MAKE RENTAL PAYMENTS ON THE PROJECT IS SUBJECT TO THE LAWFUL APPROPRIATION OF FUNDS BY THE COUNTY FOR THE PAYMENT OF SUCH RENTAL PAYMENTS. THE COUNTY HAS NO OBLIGATION TO APPROPRIATE FUNDS IN ANY FISCAL YEAR TO MAKE RENTAL PAYMENTS AND TO THE EXTENT APPROPRIATIONS ARE MADE BY THE COUNTY IN ANY FISCAL YEAR, SUCH APPROPRIATIONS WILL BE LIMITED TO THE AMOUNT OF REVENUES FROM THE PROJECT, PLUS ANY OTHER LEGALLY APPROPRIATED AND AVAILABLE FUNDS.

NUMBER R-

CERTIFICATE OF PARTICIPATION  
Evidencing a Proportionate Interest of the Owner  
Hereof in Payments to be Made

by

NEWTON COUNTY, TEXAS

as the Rental Payments  
Pursuant to a Lease Agreement  
(Detention Facility Acquisition Project)

Interest Rate	Final Maturity Date	CUSIP
9.375% per annum	June 15, 2011	_____

Registered Owner: \_\_\_\_\_

Principal Sum: \_\_\_\_\_

THIS IS TO CERTIFY that the registered owner (named above) of this Certificate of Participation (herein called the "Certificate") is the owner of the proportionate interest hereinafter stated in certain rights in that certain Lease Agreement dated as

of June 15, 1990 (the "Agreement") by and between **NEWTON COUNTY, TEXAS** (the "County") and **DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC.** (the "Corporation") relating to the lease and acquisition of certain land (the "Land") and improvements thereon (the "Improvements") identified in the Agreement (together, the "Project"), the Corporation's right, title and interest in and under the Agreement, including the lease payments to be made thereunder (the "Rental Payments"), having been assigned to **NCNB TEXAS NATIONAL BANK**, as trustee (the "Trustee"), a national banking association having a corporate trust office at which it currently conducts corporate trust business in Houston, Texas (said corporate trust office being herein referred to as the "Principal Office").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Agreement and the Trust Agreement described below, on the maturity date specified above (the "Certificate Maturity Date") or, if selected for redemption, on the redemption date, the unpaid balance of the principal sum specified above, said principal sum representing the registered Owner's proportionate share of the portions designated as principal of the aggregate Rental Payments to be paid by the County during the term of the Agreement, and to receive on the 15th day of each June and December (the "Certificate Payment Dates"), commencing December 15, 1990 with respect to interest and December 15, 1991 with respect to principal, to and including the Certificate Maturity Date, the registered owner's proportionate share of the portions designated as principal and interest of Rental Payments coming due on the 15th day of each of the preceding six (6) months, in accordance with the amortization schedule attached hereto as Exhibit "A" and made a part hereof for all purposes. Said proportionate share of those portions designated as interest of the Rental Payments is the result of the multiplication of the aforesaid portions designated as principal of all of the Rental Payments due on or after the next preceding Certificate Payment Date by the interest rate per annum specified above calculated on the basis of a 360-day year of twelve 30-day months. As further described in the Agreement, if a Determination of Taxability, as described in the Agreement, occurs with respect to the Certificates the interest rate on the Certificates shall increase by three percent (3%) per annum. With the exception of the final payment of the principal sum of a Certificate, which requires surrender of the Certificate to the Trustee at its Principal Office, payments of principal and interest shall be made to the person appearing on the Certificate Register of the Trustee as Owner thereof at the close of business on the 1st calendar day of the month of the Certificate Payment Date.

[To appear on printed certificates only]

Reference is made to the further provisions of this Certificate set forth on the reverse hereof which shall for all purposes have the same effect as though fully set forth herein.

**IT HAS BEEN CERTIFIED, RECITED AND DECLARED BY THE COUNTY** that all acts, conditions and things required by the Constitution and statutes of the State of Texas and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of the Agreement exist, have happened and have been performed in due time, form and manner as required by law.

There is on file with the Trustee a Certificate of Registration issued by the Comptroller of Public Accounts of the State of Texas. [Previous sentence to be included on printed Certificate only.] This Certificate has been executed by the manual signature of an authorized signatory of the Trustee dated as of the date below.

Date: \_\_\_\_\_

**NCNB TEXAS NATIONAL BANK,**  
As Trustee

By: \_\_\_\_\_  
Authorized Signatory

[To appear on front of typewritten Certificates before the penultimate paragraph and to appear on back of Certificate on printed Certificates]

The Certificates are payable from the Rental Payments and from the moneys held in the funds and accounts (other than the Special Rebate Account and the Revenue Account) established pursuant to the Trust Agreement Relating to a Detention Facility Acquisition Project dated as of June 15, 1990 (the "Trust Agreement") by and among the County, the Corporation and the Trustee, subject to the provisions of the Trust Agreement permitting the applications thereof for or to the purposes and on the terms and conditions set forth in the Trust Agreement. The obligations of the County to make Rental Payments is subject to the lawful appropriation of funds by the County for the payment of Rental Payments. The County has no obligation to appropriate funds in any fiscal year to make Rental Payments and to the extent appropriations are made by the County in any fiscal year, such appropriations will be limited to any revenues from the Project, plus any other legally appropriated and available funds. The



obligation to make Rental Payments is not a debt of the County beyond any fiscal year for which the County has appropriated mon-  
eys to make Rental Payments, or a debt or obligation of the State  
of Texas or any other political subdivision thereof. Further-  
more, the obligation to make Rental Payments is not a liability  
of or a lien or charge upon funds or property of the County  
beyond any fiscal year for which the County has appropriated mon-  
eys to make Rental Payments.

All amounts payable hereunder are to be paid in lawful money of the United States of America which at the time of payment is legal tender. With the exception of the final principal payment, the principal and interest payable on all Certificates shall be paid by check or draft of the Trustee mailed to the persons appearing on the Certificate register of the Trustee as owners of the Certificates as of the close of business on the first day of the month of the Certificate Payment Date at their addresses recorded on the Certificate register or sent by other customary means, including but not limited to wire transfer, as agreeable between the Trustee and the owners of the Certificates. If wire transfer is agreed to as the means of payment, the cost of such wire transfer service shall be reimbursed as an expense of the Trustee. Wire transfer is an agreed means of payment to any owner of at least twenty-five percent (25%) of the outstanding principal amount of Certificates which provides proper written wire transfer instructions to the Trustee prior to the first day of the month of the next Certificate Payment Date. The final payment of principal on each Certificate shall be made only upon surrender of the Certificate to the Trustee at its Principal Office.

This Certificate has been executed by the Trustee pursuant to the terms of the Trust Agreement. Copies of the Agreement, the Trust Agreement and related assignment agreements are on file at the Principal Office of the Trustee, and reference is hereby made to these documents and any and all amendments thereto for a description of the pledges and covenants securing the Certificates, the nature, extent and manner of enforcement of such pledges, the rights with respect thereto, and the other terms and conditions upon which the Certificates are delivered thereunder.

The Trust Agreement permits certain amendments or supplements to the Trust Agreement not prejudicial to the Certificate owners to be made without the consent of or notice to the Certificate owners, certain other amendments or supplements to the Trust Agreement and the Agreement to be made with the consent of the owners of not less than fifty-one percent (51%) in aggregate principal amount of the Certificates then outstanding and other amendments or supplements to the Trust Agreement and the Agreement to be made only with the consent of all Certificate owners.

This Certificate may only be transferred to a sophisticated institutional investor and only after the purchaser has provided the Trustee an investment letter in the form attached as Exhibit "G" to the Trust Agreement. In general, a sophisticated institutional investor is one which has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, and is capable of protecting its own interest. A potential institutional investor will be considered sophisticated if it is able to bear the economic risk of the investment represented by its purchase of the Certificates, including the risk that the Project financed out of the proceeds of the Certificates may not generate sufficient revenues to enable the County to pay the amounts evidenced by the Certificates. This Certificate shall be transferable, subject to the foregoing restrictions, upon the Certificate register, which shall be kept for that purpose at the Principal Office of the Trustee, upon surrender and cancellation of this Certificate together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his, her or its duly authorized attorney-in-fact. Upon such transfer a new fully registered Certificate or Certificates will be issued to the transferee or transferees, for the original aggregate principal amount at the time of the initial issuance of the Certificates and in the case of two or more transferees, the proportionate original principal amount, in each case as certified by the transferor in a manner acceptable to the Trustee. The Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Trustee shall not be affected by any notice to the contrary.

The Certificates are issuable in the form of fully registered Certificates. The Certificates, upon surrender thereof at the Principal Office of the Trustee with a written request for exchange satisfactory to the Trustee duly executed by the registered owner or his, her or its attorney-in-fact duly authorized in writing, may be exchanged for an equal aggregate principal amount of fully registered Certificates of the same maturity, as provided in the immediately preceding paragraph.

On the first succeeding Certificate Payment Date subsequent to the filing of a petition in bankruptcy by or against the Corporation (if the Corporation consented to or acquiesced in such filing) and on the first succeeding Certificate Payment Date subsequent to the expiration of sixty (60) days after the filing of a petition in bankruptcy against the Corporation, if the petition is not dismissed within such sixty (60) day period, and on June 15, 2000 or on any Certificate Payment Date thereafter, the Certificates are subject to redemption, prior to their scheduled maturity, in whole, but not in part, if the County causes such redemption by exercising its purchase option under the Agreement, at a premium through December 15, 2004 and at par thereafter, in accordance with and at a redemption price equal to the sum of:

(i) the outstanding principal listed on Exhibit "A" hereto for the June 15 or December 15 (as the case may be) Certificate Payment Date on which such redemption is to occur, plus (ii) the Total Cumulative Semiannual Rental Payment Amount listed on Exhibit "A" hereto for the June 15 or December 15 (as the case may be) Certificate Payment Date on which such redemption is to occur, plus (iii) a premium as shown on Exhibit "A" hereto, from amounts paid by the County upon the payment of the Concluding Payment pursuant to the terms of the Agreement. The Certificates are subject, prior to their maturity, in whole, at par, to redemption if the Project is lost, destroyed, stolen, damaged or condemned, is not repaired or replaced and the County pays the amount required under the Agreement. The Certificates are additionally subject, prior to their maturity, in whole, at a premium of 108% of the aggregate principal amount of the Certificates outstanding, to redemption if (i) a Determination of Taxability, as described in the Agreement, occurs with respect to the Certificates, (ii) the County causes such redemption by exercising its purchase option under the Agreement, and (iii) the County pays the amount required for such redemption. The Certificates are subject to redemption on December 15, 1992, in whole or in part, at par, if all or a portion of the Improvements are deleted from the Agreement because of nonacceptance of such Improvements by the County on or before October 15, 1992, or as soon as possible on a regular Certificate Payment Date but in no event later than December 15, 1992, in part, if the amount on deposit in the Property Acquisition Account, as such term is defined under the Trust Agreement, after final disbursements of Financed Costs, as such term is defined in the Trust Agreement, exceeds \$100,000.00. The terms governing the foregoing redemptions arising under the Agreement are contained in the Trust Agreement. If the Agreement is terminated in the event the County does not appropriate funds as provided in the Agreement prior to the commencement of each succeeding fiscal year of the County or if certain other events of default occur as provided for in the Trust Agreement, the Certificates shall be paid to the extent of available funds under the terms and conditions set forth in the Trust Agreement.

In the case of a mandatory redemption, the particular Certificates to be redeemed shall be selected not more than forty (40) calendar days prior to the redemption date by the Trustee, from the then outstanding Certificates that have not been previously called for redemption.

Notice of redemption hereof shall be mailed, first class postage prepaid, as soon as practicable but not less than twenty (20) calendar days or more than forty (40) calendar days prior to the redemption date, to the registered owner of this Certificate. If this Certificate, or any portion thereof, is called for redemption and payment is duly provided therefor as specified in the Trust Agreement, any further interest on the portion so

called shall cease to accrue hereon from and after the date fixed for redemption.

This Certificate evidences a proportionate interest in (1) the Rental Payments under the Agreement, and (2) the moneys held in funds and accounts (other than the Special Rebate Account and the Revenue Account) established pursuant to the Trust Agreement, all of which are subject to the provisions of the Trust Agreement permitting the application thereof for or to the purposes and on the terms and conditions set forth in the Trust Agreement. The obligation of the County to make Rental Payments constitutes a current expense of the County. If the County does not appropriate funds as provided in the Agreement prior to the commencement of each succeeding fiscal year of the County and if other funds are not available for Rental Payments as provided in the Agreement, the Agreement shall be terminated upon the conclusion of the last fiscal year of the County for which the County has appropriated funds as more particularly described in the Agreement.

THE TRUSTEE HAS NO OBLIGATION OR LIABILITY TO THE REGISTERED OWNERS OF THE CERTIFICATES FOR THE PAYMENT OF THE INTEREST OR PRINCIPAL OF THE CERTIFICATES; THE TRUSTEE'S SOLE OBLIGATION IS TO ADMINISTER, FOR THE BENEFIT OF THE COUNTY, THE CORPORATION AND THE CERTIFICATE OWNERS, THE VARIOUS FUNDS AND ACCOUNTS ESTABLISHED IN THE TRUST AGREEMENT. THE TRUSTEE SHALL NOT BE RESPONSIBLE OR LIABLE TO ANY CERTIFICATE OWNER TO PAY ANY INTEREST, PRINCIPAL OR PREMIUM DUE OR TO BECOME DUE ON THE CERTIFICATES EXCEPT OUT OF THE TRUST FUNDS, AS DEFINED AND ESTABLISHED IN THE TRUST AGREEMENT, AVAILABLE TO THE TRUSTEE.

The Trustee and the Corporation shall not have any obligation or liability to the registered owners of Certificates with respect to the payment, when due, of Rental Payments by the County or, except as expressly provided in the Trust Agreement, with respect to the performance by the County of any other covenant made by it in the Agreement.

(Form of Instructions for Transfer)

#### INSTRUCTIONS FOR TRANSFER

The Certificate must be presented for transfer and registration into Assignee's name at the corporate trust offices of NCNB Texas National Bank, 1025 Elm Street, 9th Floor, Dallas, Texas 75202, Attention: Bond Operations; or mailed to NCNB Texas National Bank, P.O. Box 830501, Dallas, Texas 75283-0501. The registered Certificate may be picked up or may be mailed

according to your instructions after a new Certificate has been prepared.

Certificates will only be registered exactly as the name appears below. Direct inquiries regarding transfer to the Trustee at (713) 247-7810.

Record Date is the first calendar day of the month of the Certificate Payment Date. **IT IS THE RESPONSIBILITY OF THE ASSIGNEE TO PRESENT THE CERTIFICATE FOR TRANSFER.** Trustee's sole responsibility is to pay the registered owner as of Record Date. No claims for payments will be recognized other than for failure to pay the registered owner. All other claims for payments and accrued interest must be presented to the Assignor.

(Form of Assignment)

**ASSIGNMENT**

For value received \_\_\_\_\_  
the undersigned do(es) hereby sell, assign and transfer unto \_\_\_\_\_  
\_\_\_\_\_ the within mentioned registered  
Certificate and hereby irrevocably constitute(s) and appoint(s)  
\_\_\_\_\_ attorney, to transfer the same  
on the Certificate register of the Trustee with full power of  
substitution in the premises. The remaining aggregate principal  
amount of the Certificate at the date hereof is \$ \_\_\_\_\_.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within registered Certificate in every particular without alteration or enlargement or any change whatsoever.

[Form of Registration Certificate of Comptroller of Public Accounts

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER )  
OF PUBLIC ACCOUNTS )  
)  
) REGISTER NO. \_\_\_\_\_  
)  
THE STATE OF TEXAS )

I HEREBY CERTIFY that this Certificate of Participation has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

**EXHIBIT "A"**  
**TO CERTIFICATE OF PARTICIPATION**  
**SEWTON COUNTY AMORTIZATION SCHEDULE**

MONTHLY RENTAL PAYMENT DATES		TOTAL CUMULATIVE	CERTIFICATE	INTEREST	PRINCIPAL	OUTSTANDING
FROM:	TO:	SEMI-ANNUAL RENTAL PAYMENT AMOUNT	PAYMENT DATES	PORTION	PORTION	PRINCIPAL
15-Jun-90	15-Nov-90	482,812.50	15-Dec-90	482,812.50	0.00	10,300,000.00 *
15-Dec-90	15-May-91	482,812.50	15-Jun-91	482,812.50	0.00	10,300,000.00 **
15-Jun-91	15-Nov-91	582,812.50	15-Dec-91	482,812.50	100,000.00	10,200,000.00 **
15-Dec-91	15-May-92	578,125.00	15-Jun-92	478,125.00	100,000.00	10,100,000.00 **
15-Jun-92	15-Nov-92	573,437.50	15-Dec-92	473,437.50	100,000.00	10,000,000.00 **
15-Dec-92	15-May-93	568,750.00	15-Jun-93	468,750.00	100,000.00	9,900,000.00 **
15-Jun-93	15-Nov-93	564,062.50	15-Dec-93	464,062.50	100,000.00	9,800,000.00 **
15-Dec-93	15-May-94	559,375.00	15-Jun-94	459,375.00	100,000.00	9,700,000.00 **
15-Jun-94	15-Nov-94	554,687.50	15-Dec-94	454,687.50	100,000.00	9,600,000.00 **
15-Dec-94	15-May-95	550,000.00	15-Jun-95	450,000.00	100,000.00	9,500,000.00 **
15-Jun-95	15-Nov-95	545,312.50	15-Dec-95	445,312.50	100,000.00	9,400,000.00 **
15-Dec-95	15-May-96	540,625.00	15-Jun-96	440,625.00	100,000.00	9,300,000.00 **
15-Jun-96	15-Nov-96	535,937.50	15-Dec-96	435,937.50	100,000.00	9,200,000.00 **
15-Dec-96	15-May-97	631,250.00	15-Jun-97	431,250.00	200,000.00	9,000,000.00 **
15-Jun-97	15-Nov-97	621,875.00	15-Dec-97	421,875.00	200,000.00	8,800,000.00 **
15-Dec-97	15-May-98	612,500.00	15-Jun-98	412,500.00	200,000.00	8,600,000.00 **
15-Jun-98	15-Nov-98	603,125.00	15-Dec-98	403,125.00	200,000.00	8,400,000.00 **
15-Dec-98	15-May-99	593,750.00	15-Jun-99	393,750.00	200,000.00	8,200,000.00 **
15-Jun-99	15-Nov-99	584,375.00	15-Dec-99	384,375.00	200,000.00	8,000,000.00 **
15-Dec-99	15-May-2000	575,000.00	15-Jun-2000	375,000.00	200,000.00	7,800,000.00 **
15-Jun-2000	15-Nov-2000	565,625.00	15-Dec-2000	365,625.00	200,000.00	7,600,000.00 **
15-Dec-2000	15-May-2001	556,250.00	15-Jun-2001	356,250.00	200,000.00	7,400,000.00 **
15-Jun-2001	15-Nov-2001	546,875.00	15-Dec-2001	346,875.00	200,000.00	7,200,000.00 **
15-Dec-2001	15-May-2002	537,500.00	15-Jun-2002	337,500.00	200,000.00	7,000,000.00 ***
15-Jun-2002	15-Nov-2002	628,125.00	15-Dec-2002	328,125.00	300,000.00	6,700,000.00 ***
15-Dec-2002	15-May-2003	614,062.50	15-Jun-2003	314,062.50	300,000.00	6,400,000.00 ***
15-Jun-2003	15-Nov-2003	600,000.00	15-Dec-2003	300,000.00	300,000.00	6,100,000.00 ****
15-Dec-2003	15-May-2004	585,937.50	15-Jun-2004	285,937.50	300,000.00	5,800,000.00 ****
15-Jun-2004	15-Nov-2004	571,875.00	15-Dec-2004	271,875.00	300,000.00	5,500,000.00 ****
15-Dec-2004	15-May-2005	557,812.50	15-Jun-2005	257,812.50	300,000.00	5,200,000.00
15-Jun-2005	15-Nov-2005	543,750.00	15-Dec-2005	243,750.00	300,000.00	4,900,000.00
15-Dec-2005	15-May-2006	529,687.50	15-Jun-2006	229,687.50	300,000.00	4,600,000.00
15-Jun-2006	15-Nov-2006	615,625.00	15-Dec-2006	215,625.00	400,000.00	4,200,000.00
15-Dec-2006	15-May-2007	596,875.00	15-Jun-2007	196,875.00	400,000.00	3,800,000.00
15-Jun-2007	15-Nov-2007	578,125.00	15-Dec-2007	178,125.00	400,000.00	3,400,000.00
15-Dec-2007	15-May-2008	559,375.00	15-Jun-2008	159,375.00	400,000.00	3,000,000.00
15-Jun-2008	15-Nov-2008	540,625.00	15-Dec-2008	140,625.00	400,000.00	2,600,000.00
15-Dec-2008	15-May-2009	621,875.00	15-Jun-2009	121,875.00	500,000.00	2,100,000.00
15-Jun-2009	15-Nov-2009	598,437.50	15-Dec-2009	98,437.50	500,000.00	1,600,000.00
15-Dec-2009	15-May-2010	575,000.00	15-Jun-2010	75,000.00	500,000.00	1,100,000.00
15-Jun-2010	15-Nov-2010	551,562.50	15-Dec-2010	51,562.50	500,000.00	600,000.00
15-Dec-2010	15-May-2011	628,125.00	15-Jun-2011	28,125.00	600,000.00	0.00
<b>TOTALS:</b>		<b>\$24,043,750.00</b>		<b>\$13,743,750.00</b>	<b>\$10,300,000.00</b>	

Premiums Payable in the Event of a Redemption Caused by an Optional Purchase by County:

- \* Plus 5% Redemption Premium
- \*\* Plus 4% Redemption Premium
- \*\*\* Plus 3% Redemption Premium
- \*\*\*\* Plus 2% Redemption Premium
- \*\*\*\*\* Plus 1% Redemption Premium

EXHIBIT "C" TO TRUST AGREEMENT

(FORM OF)

REQUISITION REQUESTING DISBURSEMENT OF ISSUANCE COSTS

In accordance with the terms of that certain Lease Agreement dated as of June 15, 1990 between NEWTON COUNTY, TEXAS ("County") and DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC. ("DMS") and further in accordance with the terms of that certain Trust Agreement Relating to a Detention Facility Acquisition Project ("Trust Agreement") dated as of June 15, 1990 by and among DMS, the County and NCNB TEXAS NATIONAL BANK ("Trustee"), the County hereby requests a disbursement from the Property Acquisition Account for certain Financed Costs relating to the issuance and sale of the Certificates of Participation pursuant to the Trust Agreement, the acquisition of the Land and title insurance relating thereto, and other costs related to the design and construction of the Project. The County hereby represents and warrants for all purposes that:

- (a) The amount to be distributed is \$\_\_\_\_\_.
- (b) Payment is to be made to the parties listed on Exhibit "1" attached hereto and made a part hereof at the closing of the issuance and sale of the Certificates or as otherwise directed by such parties, with payment to be made by check, unless otherwise directed to be transferred by wire in Exhibit "1".
- (c) The amount to be disbursed constitutes Financed Costs, relating to the issuance and sale of the Certificates of Participation pursuant to the Trust Agreement, and was necessarily or reasonably incurred, and is not being paid in advance of time, if any, fixed for any payment.
- (d) If applicable to each such disbursement, the work relating to such Financed Costs has been completed.
- (e) No amount set forth in this Requisition was included in any Requisition Requesting Disbursement of Issuance Costs previously filed with the Trustee for which payment was actually made by the Trustee.



NEWTON COUNTY, TEXAS -

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Payment of requested disbursements approved this \_\_\_\_\_ day of  
\_\_\_\_\_, 1990.

DIVERSIFIED MUNICIPAL SERVICES OF  
TEXAS, INC.

BY: \_\_\_\_\_

NAME: H. Joseph Vaughn

TITLE: President

EXHIBIT "1" TO REQUISITION REQUESTING  
DISBURSEMENT OF ISSUANCE COSTS

DISBURSEMENT OF ISSUANCE COSTS

Payment is to be made by the Trustee to the following firms and upon presentation of invoices to the Trustee in the amount and at the address or wire transfer address shown below:

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_

Wire to: \_\_\_\_\_  
Account No. \_\_\_\_\_  
ABA # \_\_\_\_\_

(includes legal fees and costs and expenses)

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_

Wire to: \_\_\_\_\_  
Account No. \_\_\_\_\_  
ABA # \_\_\_\_\_

(legal fees as special counsel to county)

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_

Wire to: \_\_\_\_\_  
\_\_\_\_\_

(placement agent's fee)

TOTAL ISSUANCE COSTS \$ \_\_\_\_\_

EXHIBIT "D" TO TRUST AGREEMENT

(FORM OF)

REQUISITION REQUESTING DISBURSEMENT

In accordance with the terms of that certain Lease Agreement (the "Lease Agreement") dated as of June 15, 1990 between **NEWTON COUNTY, TEXAS** ("County") and **DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC.** ("DMS") and further in accordance with the terms of that certain Trust Agreement Relating to a Detention Facility Acquisition Project ("Trust Agreement") dated as of June 15, 1990 by and among DMS, the County and **NCNB TEXAS NATIONAL BANK** ("Trustee"), the County hereby requests a disbursement from the Property Acquisition Account for certain Financed Costs. The County hereby represents and warrants for all purposes that:

1. The amount to be disbursed is \$\_\_\_\_\_.
2. This is Requisition Requesting Disbursement No. \_\_\_\_\_.
3. Payment is to be made to \_\_\_\_\_ at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

4. The amount to be disbursed constitutes Financed Costs pursuant to the above-referenced Trust Agreement, and said amount is required to be disbursed pursuant to an Acquisition Contract entered into therefor by or on behalf of the County, or was necessarily or reasonably incurred, and said amount is not being paid in advance of time, if any, fixed for any payment.
5. The work relating to such Financed Costs has been completed or the materials have been furnished for which disbursement is requested.
6. No amount set forth in this Requisition was included in any Requisition Requesting Disbursement previously filed with the Trustee for which payment was actually made by the Trustee.
7. If the amount to be disbursed constitutes payment for all or a portion of the Improvements as defined in the Lease Agreement, there is attached hereto as Attachment I an original of the Acceptance Certificate, executed by an Authorized

Officer of the County, for the Improvement(s) for which payment is being requested.

8. If the amount to be disbursed is for construction, the design, acquisition, construction and installation of the applicable portion of the Improvements for which payment is being requested have been completed in accordance with plans and specifications approved by the County and in accordance with the terms and conditions of the Acquisition Contracts, and said applicable portion of the Improvements conforms to all applicable zoning, planning and building regulations and is suitable and sufficient for the expected uses thereof.

[This statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being.]

9. If the amount to be disbursed is for construction, the signatories hereto have made such investigation of such sources of information as are deemed by them to be necessary, including pertinent records of the County, and are of the opinion that the applicable portion of the Improvements has been fully paid for and no claim or claims exist against the County or vendor of the Improvements out of which a lien based on furnishing labor or material exists or might ripen. However, there is excepted from the foregoing statement any claim or claims arising out of which a lien exists or might ripen and which claim or claims the County intends to contest, which claim or claims are described as follows: [Describe claim or claims or indicate affirmatively that the County does not intend to contest any such claims.]

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[This statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being.]

10. If the amount to be disbursed is for construction, funds are on deposit in the Property Acquisition Account sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims contested by the County and described in this or any previous Requisition.

11. (a) No written notice of any lien, or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable under this Requisition to any of the persons named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien,

attachment or claim has been released or discharged, or will be released or discharged upon the payment of this requisition.

(b) This Requisition contains no items representing payment on account of any retained percentages which are entitled to be retained as of the date hereof.

(c) With respect to each item for payment or reimbursement of County for payment for labor or materials and equipment, the labor for which payment is requested was actually performed or the materials and equipment were actually furnished or delivered to or installed in or about the Project.

(d) Such materials and equipment are not subject to any lien or security interest, or the funds requested by this Requisition are to be used to satisfy any such lien or security interest.

(e) This Requisition, if for construction costs, when added to the total of prior requisitions for construction costs does not in amount exceed one hundred percent (100%) of the cost of work performed and material in place less the amount of any retainage required by the applicable Acquisition Contract.

(f) All construction work which has been completed on the Project is substantially in conformity with the Plans and Specifications.

(g) The moneys now on deposit in the Property Acquisition Account are sufficient to complete the acquisition of the Project or the Project has been so completed.

(h) This Requisition is not for payment or reimbursement of County for payment for materials which are not, as of the date hereof, physically incorporated into the Project, unless such materials are properly stored on site.

(i) No Event of Default (as defined in the Trust Agreement and the Lease Agreement) has occurred and is continuing as of the date hereof.

**NEWTON COUNTY, TEXAS**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Date: \_\_\_\_\_

Payment of requested disbursements approved this \_\_\_ day of \_\_\_\_\_, 19\_\_.

**DIVERSIFIED MUNICIPAL SERVICES  
OF TEXAS, INC.**

BY: \_\_\_\_\_

NAME: H. Joseph Vaughn

TITLE: President

EXHIBIT "E"

TRUSTEE'S FEE SCHEDULE

Acceptance Fee - \$4,000 paid at closing (does not include trustee counsel fee and expenses)

Annual Administration Fee - \$3,750 paid annually in advance

Plus out-of-pocket expenses including postage, envelopes, courier services, attorney fees and wire transfer charges

EXHIBIT "F" TO TRUST AGREEMENT

DRAW-DOWN SCHEDULE

<u>Date*</u>	<u>Maximum Disbursements**</u>	<u>Cumulative Allowable Disbursements**</u>
7/28/90	\$ 739,500.00	\$ 739,500.00
8/1/90	1,000,000.00	1,543,500.00
9/1/90	1,100,000.00	2,643,500.00
10/1/90	1,100,000.00	3,743,500.00
11/1/90	1,100,000.00	4,843,500.00
12/1/90	1,100,000.00	5,943,500.00
1/1/91	600,000.00	6,543,500.00
2/1/91	600,000.00	7,339,500.00
3/1/91 and on the first Business Day of each calendar month thereafter	Balance in the Property Acquisition Account	All monies able to be disbursed from the Property Acquisition Account

\*or on the first Business Day thereafter

\*\*plus amounts not used from previous months' disbursements

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EXHIBIT "G" TO TRUST AGREEMENT

FORM OF INVESTMENT LETTER TO TRUSTEE

[To be dated the date of purchase]

County of Newton  
County Courthouse  
Newton, Texas 75966

Prager McCarthy & Lewis  
One Maritime Plaza, 11th Floor  
San Francisco, California 94111

California Financial Services  
5000 Birch Street  
Newport Beach, California 92660

NCNB Texas National Bank  
700 Louisiana Street  
32nd Floor  
Houston, Texas 77002

RE: \$10,300,000 County of Newton, Texas Certificates of  
Participation in Lease Purchase Agreement (Detention  
Facility Acquisition Project)

Ladies and Gentlemen:

In connection with our purchase of the above-referenced certificates of participation (the "Certificates") issued pursuant to a Trust Agreement Relating to a Detention Facility Acquisition Project (the "Trust Agreement"), dated as of June 15, 1990, by and among the County of Newton, Texas (the "County"), Diversified Municipal Services of Texas, Inc. (the "Corporation") and NCNB Texas National Bank, as Trustee (the "Trustee"), the undersigned (the "Purchaser") hereby represents, warrants and agrees that:

1. The Purchaser is an "accredited investor" pursuant to Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission in accordance with the Securities Act of 1933, as amended. The Purchaser has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of certificates of participation in lease obligations, tax-exempt securities and other investment vehicles similar in character to the Certificates, to be able to evaluate the risks and merits of the investment represented by the purchase of the Certificates.

2. An official statement describing the Certificates, the security therefor and certain risks associated with investing in

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the Certificates and containing certain limited information with respect to the County, the Trust Agreement, and the Lease Agreement have been delivered to and reviewed by the Purchaser prior to its commitment to purchasing the Certificates. The Purchaser understands that said official statement contains only limited information and does not necessarily set forth all information that is or may be material in connection with a determination by the Purchaser of whether or not to purchase the Certificates. In addition to reviewing the official statement, the Purchaser has made its own inquiry and analysis, to the extent it has deemed appropriate, with respect to the County, the Certificates and other material factors affecting the credit standing of the County, the security for the Certificates and the ability of the County to fulfill its obligations under the Lease Agreement (the "Lease"), dated as of June 15, 1990, by and between the County, as lessee, and the Corporation, as lessor. The Purchaser understands that no financial information or statistical data in connection with this transaction has been reviewed by the Trustee, Winstead Sechrest & Minick P.C., special tax counsel ("WS&M"), or by Stoel Rives Boley Jones & Grey ("SRBJG"), counsel to Prager McCarthy & Lewis ("PML").

3. The Purchaser either has been supplied with or has had access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the County, its credit standing, the Lease and the Certificates so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Certificates.

4. The Purchaser acknowledges that neither PML, California Financial Services ("CFS"), SRBJG nor WS&M has made any representation regarding the quality, creditworthiness or liquidity of the Certificates. The Purchaser has not relied upon any statements made by or any information prepared by PML, CFS, SRBJG or WS&M in arriving at its purchase decision.

5. The Certificates (a) are not being registered under the Securities Act of 1933, as amended, and are not being registered or otherwise qualified for sale under the "blue sky" laws of any state, (b) will not be listed on any stock or other securities exchange, (c) will not carry a rating from any rating service, and (d) will be subject to restrictions on their sale, transfer or other disposition as described in the official statement referred to above and therefore will not be readily marketable. The Purchaser acknowledges that the Certificates cannot be sold unless they are subsequently registered under such acts or an exemption from such registration is available.

6. The Purchaser is able to bear the economic risk of the investment represented by its purchase of the Certificates, including the risk that the facility financed out of the proceeds of the Certificates may not generate sufficient revenues to enable the County to pay the amounts evidenced by the Certificates.

7. The Purchaser is acquiring the Certificates for its own account for investment and not with a view to dividing its participation with others or with a view to, or for resale in connection with, a "distribution" (as that term is used in the Securities Act of 1933, as amended, and rules and regulations of the Securities and Exchange Commission promulgated thereunder) of all or any portion thereof. The Purchaser has no present intention of selling, negotiating or otherwise disposing of the Certificates or any participation therein, subject nevertheless to the condition that the disposition of the Certificates or any participation therein by the Purchaser shall at all times be under the Purchaser's control.

8. The Purchaser shall not assign or offer the Certificates, or any participation therein, for sale without complying with all applicable securities laws and the restrictions on transfer, sale or other disposition described in the official statement referred to above.

Very truly yours,

[PURCHASER]

By \_\_\_\_\_

EXHIBIT "H" TO TRUST AGREEMENT

County of Newton, Texas  
Newton County Revenue Account  
c/o NCNB Texas National Bank  
700 Louisiana Street  
32nd Floor  
Houston, Texas 77002

Date: \_\_\_\_\_

No. \_\_\_\_\_

Pay to the order of NCNB Texas National Bank, as Trustee, the amount of \$ \_\_\_\_\_ (\$ \_\_\_\_\_).

\_\_\_\_\_  
County Treasurer

Countersigned:

\_\_\_\_\_  
County Auditor

[Form of Endorsement]

For deposit to the Newton County Agreement Payment Account without warranty, representation or recourse.

NCNB Texas National Bank,  
as Trustee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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EXHIBIT "H" - Solo Page

**APPENDIX C**

**LEASE AGREEMENT**

**LEASE AGREEMENT**

**Between the**

**COUNTY OF NEWTON, TEXAS  
as Lessee**

**and**

**DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC.  
as Lessor**

**Dated as of June 15, 1990**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of June 15, 1990, is by and between DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC., a Texas corporation, as lessor ("Lessor"), whose address is 132 Ulen Boulevard, Lebanon, Indiana 46052, and the COUNTY OF NEWTON, TEXAS, a political subdivision of the State of Texas, as lessee ("Lessee"), whose address is Newton County Courthouse, Highway 190, Newton, Texas 75966.

### W I T N E S S E T H:

WHEREAS, Lessee is authorized by State Laws to establish, acquire and operate a detention facility and finds the proposed Land suitable to lease for such purposes;

WHEREAS, Lessee is authorized by State Laws to lease and otherwise acquire property necessary for such purposes;

WHEREAS, Lessee has determined that it is necessary and desirable to lease the Land and the Improvements described in the attached Exhibit "A" from Lessor in order to provide facilities needed to carry out its purposes, all pursuant to this Lease; and

WHEREAS, Lessor will acquire the Land on or before the closing of this Lease; and

WHEREAS, Lessor is willing to finance the Land and the Improvements and to lease the Land and the Improvements to Lessee, pursuant to this Lease;

NOW THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section 1.1 shall, for all purposes of this Lease, have the meanings herein specified. Terms defined in the Trust Agreement and capitalized herein without being defined herein shall, for the purposes of this Lease, have the meanings given them in the Trust Agreement unless the context requires otherwise.

Acquisition Contract: Any contract between Lessee or Lessor and one or more persons or corporations for the design,

acquisition, construction or installation of the Improvements or any part thereof.

**Agreement Payment Account:** The fund so designated and established by Trustee pursuant to the Trust Agreement.

**Available:** When used to describe funds of Lessee, means funds of Lessee which may be legally expended for such purpose within the sole and uncontestable discretion of Lessee. Funds other than Project Revenues are not legally available funds unless specifically appropriated or designated by the County through its commissioners court for payment of rents or other amounts due under this Lease.

**Certificate of Lessee:** A certificate, in the form attached hereto as Exhibit "B," executed by the officer of Lessee named therein.

**Certificates of Participation:** Those Certificates of Participation, in the form attached as Exhibit "B" to the Trust Agreement, to be prepared by Trustee and delivered to Lessor or Lessor's designee in accordance with the terms and conditions of the Trust Agreement.

**Code:** The United States Internal Revenue Code of 1986, as now or hereafter amended, and the regulations and revenue rulings and procedures issued pursuant thereto from time to time.

**Completion Date:** With respect to the Improvements, the date upon which a final Acceptance Certificate, in the form of Exhibit "G" attached hereto, is issued with respect thereto by Lessee.

**Contractor:** Hale-Mills Construction, Inc. and any other person or corporation who contracts with Lessor pursuant to Article III hereof to construct, or install the Improvements or any part thereof.

**Costs or Project Costs:** All costs and expenses incurred in relation to the Project including, without limitation, design, planning, engineering and legal costs; acquisition costs of land, interests in land, rights-of-way and easements; construction costs; costs of machinery, equipment, furniture and other capital assets incident and related to the operation, maintenance and administration of the Project; and financing costs, including interest during construction and thereafter, underwriters discount and/or fees; and fees and expenses for legal, financial and other professional services.

**County Assignment Agreement:** That certain Newton County, Texas Assignment and Agency Agreement, in the form attached hereto as Exhibit "F", whether one or more, whereby the Lessee

shall assign all of its rights and interests, but not its duties, obligations or responsibilities under an Acquisition Contract to the Trustee.

**Design Firm:** Texas Detention Management, Inc. or any other person or corporation as may be selected by Lessee with respect to the design of the Project and approved by Lessor.

**DMS Acquisition Contract Assignment and Agency Agreement:** That certain DMS Acquisition Contract Assignment and Agency Agreement, in the form attached hereto as Exhibit "I", whether one or more, whereby the Lessor shall assign all of its rights and interests, but not its duties, obligations or responsibilities, under an Acquisition Contract to the Trustee.

**Federal Law or Laws:** The Constitution and any law of the United States; and any rule or regulation of any federal agency.

**Fiscal Year:** Each twelve (12) month fiscal period of Lessee commencing on January 1 of any year and ending on December 31 of such year.

**Hazardous Materials:** (i) Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any substance the presence of which on the Project is prohibited by any State Laws or Federal Laws; (vi) any petroleum-based products which are deemed hazardous by any State Laws or Federal Laws; (vii) underground storage tanks which are deemed hazardous by any State Laws or Federal Laws; and (viii) any other substance which by any State Laws or Federal Laws requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal.

**Hazardous Materials Contamination:** The contamination (whether presently existing or hereafter occurring) of the Land, Improvements, facilities, soil, groundwater, air or other elements on or of the Project by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Lease) emanating from the Project.

**Improvements:** The detention facility, together with all furniture, fixtures and equipment to be installed or located therein, to be designed, acquired, constructed and installed on the Land in accordance with the Plans and Specifications and this

Lease, which is generally described in the attached Exhibit "A", and any other improvements constructed pursuant to this Lease.

**Independent Counsel:** An attorney or firm of attorneys duly admitted to the practice of law before the highest court of the State which is listed among the **Municipal Bond Attorneys of the United States** in the **Directory of Municipal Bond Dealers** published by The Bond Buyer.

**Land:** The real property described in the attached Exhibit "A" to be acquired by Lessor from the proceeds of the sale of the Certificates of Participation upon which the Improvements are to be constructed.

**Lease:** This Lease Agreement and any duly authorized and executed amendment hereto.

**Lessee Representative:** Any officer or employee of Lessee who is designated in writing by or by resolution of the governing body of Lessee as a Lessee Representative for purposes of this Lease.

**Lessor Representative:** The President or any Vice President of Lessor or any officer of Lessor who is designated in writing by or by resolution of the Board of Directors of Lessor as a Lessor Representative for purposes of this Lease.

**Net Proceeds:** Any insurance proceeds or condemnation award paid with respect to the Project remaining after payment therefrom of all expenses incurred in the collection thereof.

**Payment Date:** The date upon which any Rental Payment is due and payable as provided in Section 6.1 hereof and as set forth in the attached Exhibit "E."

**Permitted Encumbrances:** As of any particular time, (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to provisions of Article VII hereof, permit to remain unpaid, (ii) this Lease, (iii) any mechanic's, laborer's, materialmen's, supplier's or vendor's lien or right being contested in accordance with the terms of this Lease, (iv) the Deed of Trust and (v) the easements, restrictions and other matters described on Exhibit "H" attached hereto.

**Plans and Specifications:** Architectural and engineering drawings and specifications prepared by the Design Firm and approved by Lessee describing the Improvements and any changes therein similarly approved.

**Project:** The Land and the Improvements.

**Project Revenues:** All receipts of the Lessee, from any sources whatsoever, arising from the operation of the Project including, without limitation, payments received for the incarceration, detention or housing of prisoners, and any fees owed or paid by the Lessee for the housing of Newton County prisoners in the Project.

**Property Acquisition Account:** The fund so designated and established by Trustee pursuant to the Trust Agreement.

**Purchase Price:** For each Payment Date, the applicable amount set forth in Section 10.1 hereof."

**Rental Payment:** Any payment due from Lessee to Lessor under Section 6.1 hereof and as set forth in the attached Exhibit "E."

**Reserve Account:** The fund so designated and established by Trustee pursuant to the Trust Agreement.

**State:** The State of Texas.

**State Law or Laws:** The Constitution and laws of the State; and any ordinance, rule or regulation of any agency or political subdivision of the State.

**Term of this Lease or Lease Term:** The period during which this Lease remains in effect as specified in Sections 5.1 and 5.2 hereof.

**Trust Agreement:** The Trust Agreement Relating to a Detention Facility Acquisition Project dated as of the date hereof, by and among Lessor, Lessee and Trustee, and any duly authorized and executed amendment thereto.

**Trustee:** NCNB Texas National Bank, a national banking association, acting pursuant to the Trust Agreement.

**Trustee Representative:** Any officer or employee of the Trustee who is designated in writing by or by resolution of the governing body of the Trustee as a Trustee Representative for purposes of this Lease.

**Section 1.2 Exhibits.** The following Exhibits are attached to and by reference made a part of this Lease.

**Exhibit "A":** Description of the Land and the Improvements being leased and purchased by Lessee from Lessor pursuant to this Lease.

**Exhibit "B":** Form of Certificate of Lessee certifying various facts concerning this Lease, the Project and related matters.

Exhibit "C": Form of Opinion of Special Counsel to Lessee relating to the organization, nature and powers of Lessee; the validity, execution and delivery of this Lease and the Trust Agreement; the absence of litigation; and related matters.

Exhibit "D": Form of Operation, Maintenance and Management Agreement.

Exhibit "E": Rental Payment Schedule.

Exhibit "F": Form of Newton County Assignment and Agency Agreement.

Exhibit "G": Form of Acceptance Certificate.

Exhibit "H": List of Additional Permitted Encumbrances.

Exhibit "I": Form of DMS Acquisition Contract Assignment and Agency Agreement.

Exhibit "J": Form of Opinion of Counsel to Lessor.

(End of Article I)



## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of Lessee. Lessee represents, covenants and warrants as follows:

(a) Lessee is a duly formed and validly existing political subdivision of the State, governed by State Laws.

(b) State Laws authorize Lessee to establish, acquire, construct, operate and maintain the Project; to enter into this Lease, the Trust Agreement and the transactions contemplated hereby and thereby; and to carry out its obligations under the this Lease and the Trust Agreement.

(c) The officer of Lessee executing this Lease and the Trust Agreement has been duly authorized to execute and deliver this Lease and Trust Agreement under the terms and provisions of a resolution of Lessee's governing body or by other appropriate official action.

(d) Lessee has complied with all open meeting laws, all public bidding laws and all other State Laws and Federal Laws applicable to this Lease and the Trust Agreement and to the acquisition of the Project by Lessee, including, without limitation, any Acquisition Contracts entered into by Lessee.

(e) Except as provided under the terms of this Lease, Lessee will not transfer, lease, assign, mortgage or encumber the Project.

(f) Lessee will use the Project during the Lease Term only as a detention facility and for related county purposes.

(g) For federal income tax purposes, Lessee will, throughout the term of this Lease, treat the Project as property owned by the Lessee.

(h) Upon the execution of this Lease, Lessee will provide to Lessor a Certificate of Lessee in the form attached hereto as Exhibit "B" and an opinion of its legal counsel in the form attached hereto as Exhibit "C."

(i) Lessee is a governmental unit with general taxing powers, and that 95% or more of the net proceeds of the Certificates of Participation issued pursuant to this Lease and the Trust Agreement are to be used for local governmental activities of Lessee.

(j) The Lessee shall not allow the Project to be used in a private business use, as defined below, in excess of ten percent

(10%) of capacity of the Project. The Lessee shall not use or allow the use of any of the proceeds from the sale of the Certificates of Participation to make or finance loans to persons other than governmental units. The Lessee shall not allow the payment of ten percent (10%) or more of the interest or principal components of the Rental Payments to be directly or indirectly (A) secured by any interest in (i) property used or to be used for a private business use, or (ii) payments in respect to such property or (B) derived from payments (whether or not to the Lessee) in respect of property, or borrowed money, used or to be used for a private business use. For these purposes, the term "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit, provided that "private business use" does not include use pursuant to a management agreement or other agreement described in Section 2.1(k) hereof. A governmental unit does not include the United States or any agency or instrumentality thereof. The Lessee shall not allow any private business use of the Project which is not related to the Lessee's use of the Project as a detention facility.

(k) On or before acceptance of the Improvements, Lessee will enter into an Operation, Maintenance and Management Agreement (the "Management Agreement") in the form attached hereto as Exhibit "D". The Lessee covenants and agrees with the Lessor to perform all obligations and duties imposed on it under the Management Agreement and any modification or renewal thereof and any subsequent management contract entered into by the Lessee with respect to the Project and to enforce such Management Agreement and any modification or renewal thereof and any subsequent management contract entered into by the Lessee with respect to the Project in accordance with its terms. Except as specifically provided in the Management Agreement, Lessee will not renew, amend or modify the terms of the form Management Agreement without first having received the opinion of Independent Counsel that the proposed renewal, amendment or modification will not cause the Lease or the Certificates of Participation to constitute "private activity bonds" within the meaning of Section 141 of the Code. Furthermore, Lessee will not enter into any other operation, maintenance or management contract with respect to the Project without first having received the opinion of Independent Counsel that the proposed contract will not cause the Lease or the Certificates of Participation to constitute "private activity bonds" within the meaning of Section 141 of the Code.

(l) The Project is required by Lessee to house inmates detained or incarcerated by Lessee or the State of Texas or political subdivisions thereof. Lessee will not detain or incarcerate or accept for incarceration in the Project any prisoners other than those detained or incarcerated by Lessee or the State of Texas or political subdivisions thereof and federal prisoners who are awaiting transfer to other facilities or other

disposition under applicable Federal Laws and other prisoners, if any, to the extent permitted by State Laws as such prisoners may be defined in and supported by an opinion of qualified legal counsel requested and received by the Lessee. Prior to accepting federal prisoners or any other prisoners from sources outside of the State of Texas, the Lessee will accept prisoners, if any, submitted for detention by Texas agencies and authorities on reasonable terms and costs to be negotiated between the Lessee and such Texas agencies or authorities. During the Term of this Lease, less than 10% of the daily inmate population of the Project will consist of federal prisoners with respect to which payment for incarceration or detention is received from the United States of America or any agency or instrumentality thereof, and less than 10% of the Rental Payments will directly or indirectly derive from the detention or incarceration of federal prisoners with respect to which payment for incarceration or detention is received from the United States of America or any agency or instrumentality thereof.

(m) Upon the request of Lessor, during the Term of this Lease, Lessee shall, on a monthly basis, provide Lessor with the monthly balance sheets and income statements of Lessee relating to the operation of Lessee as a whole and not just with respect to the Project.

(n) To Lessee's knowledge, no Hazardous Materials are now located on the Project and neither Lessee nor, to Lessee's knowledge, any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under or at the Project or any part thereof. No part of the Project is being used, and to Lessee's knowledge has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials, nor is any part of the Project affected by any Hazardous Materials Contamination. To Lessee's knowledge, no property adjoining the Project is or has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials, nor is any other property adjoining the Project affected by Hazardous Materials Contamination. To Lessee's knowledge, no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Project. The Project is not currently on, and to Lessee's knowledge, has never been on, any federal or state "Superfund" or "Superlien" list. Lessee will (a) give notice to Lessor immediately upon Lessee's acquiring knowledge of the presence of any Hazardous Materials on the Project or of any Hazardous Materials Contamination with a full description thereof; and (b) promptly comply with any State Laws or Federal Laws requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Lessor with satisfactory evidence of such compliance.

(o) If Lessor shall ever have reason to believe that there are Hazardous Materials or Hazardous Materials Contamination affecting any of the Project, Lessor (by its officers, employees, agents or assigns), solely in order to protect its interest in

the Project, and without exercising any control as to the management of the Project, at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Project for the purpose of determining whether there exists on the Project any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Project arising under any state, federal or local law, rule or regulation relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Lessee which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Project for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Project and such other tests on the Project as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Lessee will supply to the Site Reviewers such historical and operational information regarding the Project as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Lessor shall make the results of such Site Assessments fully available to Lessee, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers.

(p) Regardless of whether any Site Assessments are conducted hereunder, Lessee shall, to the extent permitted by State Laws, defend, indemnify and hold harmless Lessor and Trustee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, consultants fees, investigation and laboratory fees, reasonable attorneys' fees, expenses and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the termination of this Lease) be paid, incurred or suffered by or asserted against Lessor or Trustee by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Project of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Project or the applicability of any State Laws or Federal Laws relating to Hazardous Materials (including, without limitation, CERCLA or any so-called federal, state or local "Superfund" or "Superlien" laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Lessee,

Lessor or Trustee. The representations, covenants, warranties and indemnification contained in Paragraphs (m) through (p) of this Section 2.1 shall survive the termination of this Lease.

(q) Lessor shall have the right but not the obligation, without in any way limiting Lessor's other rights and remedies under this Lease, and solely for the purpose of protecting its interest in the Project and without exercising control over the management of the Project, to enter onto the Project or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Project following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Project or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Project or other action and/or which, in Lessor's reasonable opinion, could jeopardize Lessor's interests under this Lease; provided, however, Lessor shall have no right to proceed with any of the rights granted to it in this paragraph until Lessor has provided Lessee with written notice of Lessor's intent to take any of the actions described in this paragraph and Lessee fails to commence within sixty (60) days following Lessee's receipt of such notice and diligently proceeds thereafter to complete all action necessary to clean-up, remove or resolve any of the foregoing. All reasonable costs and expenses paid or incurred by Lessor in the exercise of any such rights shall be reimbursed to Lessor by Lessee and shall be appropriated therefor during the next succeeding fiscal year of the Lessee.

**Section 2.2 Representations, Covenants and Warranties of Lessor.** Lessor represents, covenants and warrants as follows:

(a) Lessor is a corporation duly organized, existing and in good standing under State Laws; is duly qualified to transact business and hold property in the State and in every jurisdiction in which the nature of its activities requires it to be so qualified; has full and complete power to enter into this Lease and the Trust Agreement and to enter into and carry out the transactions contemplated hereby and thereby, and to carry out its obligations under this Lease and the Trust Agreement; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Lease and the Trust Agreement.

(b) Neither the execution and delivery of this Lease or the Trust Agreement nor the fulfillment of or compliance with the terms and conditions hereof and thereof nor the consummation of the transactions contemplated hereby and thereby conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is

now a party or by which Lessor or its property is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor except the Permitted Encumbrances.

(c) For federal income tax purposes, Lessor will, throughout the term of this Lease, treat the Project as property owned by the Lessee.

(d) Upon termination of this Lease pursuant to subsection 5.2(b) or subsection 5.2(d) hereof, Lessor will deliver to Lessee all documents which are or may be necessary to vest all of Lessor's right, title and interest in and to the Project in Lessee and will release all liens and encumbrances in favor of Lessor created under this Lease or the Trust Agreement with respect to the Project as provided in Article X hereof.

(End of Article II)

## ARTICLE III

### ACQUISITION OF PROJECT

#### Section 3.1 Construction and Installation of Improvements.

(a) The Improvements shall be acquired, constructed and installed pursuant to one or more Acquisition Contracts entered into by and between Lessor, at the direction and approval of Lessee, and one or more Contractors or to be entered into subsequent to the date of this Lease. Lessee and Lessor agree that Lessee as agent for Lessor shall be responsible for the selection, size, design and specifications of the Improvements.

(b) Lessor hereby irrevocably appoints Lessee as its agent in connection with the design of the Improvements on the Land in accordance with the terms and conditions of the Acquisition Contracts for the design of the Project (the "Design Contract"). Lessor will enter into one or more Acquisition Contracts with Contractors providing for the acquisition, construction and installation of the Improvements on the Land in accordance with the Plans and Specifications. Lessee shall approve the form and content of each Acquisition Contract to be entered into by Lessor to ensure that the facility to be constructed shall be built in accordance with the Plans and Specifications furnished by the Lessee. In connection with the Design Contract, Lessee shall comply with all requirements of State Laws which apply to the award of contracts by counties. Lessor agrees to cause the Project to be acquired, constructed and installed in accordance with the Plans and Specifications and in compliance with State Laws and Federal Laws applicable to the construction of the Improvements, and to obtain all approvals necessary from appropriate governmental authorities, including, but not limited to, Lessee, to construct the Improvements on the Land. The total amount payable under the Acquisition Contracts entered into by Lessor for acquisition of the Land and the Improvements on behalf of the Lessee under this Lease shall not exceed \$7,943,500.00, including the costs of the construction contract, land evaluation and soils boring, land costs, title policy and furniture, fixtures and equipment. The Lessee shall cause work on the Improvements to be pursued with due diligence until completion.

(c) Lessee shall exercise due care in the use, operation and maintenance of the Project, and shall not use, operate or maintain the Project improperly, carelessly, in violation of any State Law or Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Additionally, Lessee shall not unreasonably obstruct or hinder Lessor in carrying out its duties under and pursuant to this Lease. Lessee shall not operate, possess or use the Project unless and until all permits and licenses necessary for the operation, possession and use of the Project have been obtained. Lessee shall comply with all State

Laws and Federal Laws applicable to the use, possession and operation of the Project, and, if compliance with any such State Law and Federal Law requires changes or additions to be made to the Project, such changes or additions shall be made in accordance with Section 3.2(a) hereof.

(d) Immediately upon the execution and delivery of each Acquisition Contract, Lessor and/or Lessee, as applicable, shall assign all of their rights, if any, under such Acquisition Contract, but not their duties or responsibilities under such Acquisition Contract, to Trustee by an assignment made in the form attached hereto as Exhibit "F" or Exhibit "I", as applicable, and shall furnish Trustee with an opinion of Lessee's or Lessor's counsel regarding such Acquisition Contract in the form attached hereto Exhibit "C" or Exhibit "J", as applicable.

### **Section 3.2 Project Cost; Payment of Cost.**

(a) Lessee and Lessor agree that the Project cost payable is expected not to exceed \$10,463,181.45 plus the accrued interest received from the sale of the Certificates (including capitalized interest; the "Project Cost"). Lessor and Lessee agree that, in order to ensure that sufficient funds will be available when required (i) to pay such Project Cost, (ii) to pay the Rental Payments due on June 15, 1990 through and including May 15, 1991, (iii) to deposit \$999,000.00 into the Reserve Account to be held by Trustee pursuant to the Trust Agreement, and (iv) to pay the costs connected with the issuance of the Certificates of Participation, Lessor shall deposit or cause to be deposited with Trustee, upon the Closing Date as provided for in the Trust Agreement, the sum of \$10,300,000.00, plus accrued interest, from the proceeds of the Certificates. Such sum shall be deposited in the Property Acquisition Account, the Agreement Payment Account and the Reserve Account created pursuant to the Trust Agreement in the amounts set forth in a Certificate of Delivery and Payment to be executed by Trustee on the said Closing Date, and the use and disbursement of such funds shall be governed by the Trust Agreement. Lessee reserves the right to modify or add items to the Improvements as described on Exhibit "A"; however, any change of the Improvements (i) if material, shall be subject to the written approval of Lessor, which written approval shall not be unreasonably withheld, (ii) shall not increase the amount of funds required to be deposited by Lessor pursuant to this subsection 3.2(a), (iii) shall not alter the Rental Payments or Purchase Price under Article X hereof, and (iv) which causes the cost of completing the Project to exceed the Project cost, shall be paid with funds provided directly by Lessee.

(b) Prior to disbursements under the Trust Agreement by Trustee for all or a portion of the Improvements accepted by Lessee pursuant to this Lease and the Acquisition Contracts, Lessee,



after consultation with the Lessor, shall furnish Lessor with a requisition requesting disbursement in the form of Exhibit "D" to the Trust Agreement, accompanied by an Acceptance Certificate in the form attached hereto as Exhibit "G." Upon the delivery to Lessor of such instruments, Lessee shall be conclusively presumed to have accepted that portion of the Improvements and related services and labor represented by the requisition. Any amount to be disbursed under an Acquisition Contract entered into by Lessor shall be disbursed only to the appropriate Contractor or to any person designated by the Contractor other than the Lessor. If such requisition and accompanying instruments comply with the provisions of applicable Acquisition Contracts, this Lease and the Trust Agreement, Lessor shall authorize the requested payments and forward the requisition to Trustee for disbursement on the maturity date of the investment of the moneys available therefor in the Property Acquisition Account.

(c) If Lessee has not accepted all the Improvements by October 14, 1992, this Lease shall not be void or voidable nor shall Lessor be liable to Lessee for any loss or damage resulting from such nonacceptance of Improvements. Lessee may, prior to October 14, 1992 and with the prior written approval of Lessor, substitute items of Improvements equal in value to items of Improvements not acquired. If all or a part of the original or substituted Improvements has not been supplied or installed on or before October 14, 1992 (the "Nonacquired Improvements Date") or if Lessee refuses to accept any part of the Improvements as not being in compliance with specifications and such noncompliance and refusal to accept has not been cured on or before the Nonacquired Improvements Date (the "Nonacquired Improvements"), this Lease shall terminate as to the Nonacquired Improvements as of the Nonacquired Improvements Date. Exhibit "A" attached hereto shall be automatically amended to delete all reference to the Nonacquired Improvements, and, after payment by Lessee of the Rental Payment due and payable on November 15, 1992, Exhibit "E" attached hereto shall be automatically amended to reflect that the unpaid principal balance has been reduced by an amount equal to the principal amount of Certificates redeemed pursuant to subsection 6.01(d) of the Trust Agreement, thereby obtaining a revised unpaid principal balance (the "Acquired Improvements Principal Balance"). In order that subsequent Rental Payments will be equal to amounts coming due on the Certificates, the Rental Payments due after November 15, 1992 shall be established by reducing each principal payment proportionately such that the aggregate remaining principal payments due under the Lease equals the Acquired Improvements Principal Balance and by calculating semiannual interest on the unpaid Acquired Improvements Principal Balance pursuant to the rate terms applied in the said original Exhibit "E." The Concluding Payment set forth on Exhibit "E" for each Payment Date on or after November 15, 1992 shall also be reduced by the same proportion used to reduce the principal payments.

(End of Article III)

## ARTICLE IV

### AGREEMENT TO LEASE

**Section 4.1 Lease.** Lessor hereby leases the Project to Lessee, and Lessee hereby leases the Project from Lessor, upon the terms and conditions set forth in this Lease.

**Section 4.2 Possession and Enjoyment.** Subject to compliance by Lessee with the provisions of this Lease, Lessor hereby covenants to provide Lessee during the Term of the Lease with quiet use and enjoyment of the Project, and Lessee shall during such Lease Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. To the extent Lessor may lawfully do so, Lessor will, at the request of Lessee and at Lessee's cost, join in any legal action in which Lessee asserts its right to such possession and enjoyment, if the interests of Lessor therein are not opposed to those of Lessee. Lessor shall have the right to enter in and upon the Project as provided in Section 4.3 hereof.

**Section 4.3 Lessor Access to Project.** Lessee agrees that Lessor, the Trustee and any Lessor Representative and any Certificate Owner shall have the right, upon prior written notice, at all reasonable times to enter upon and to examine and inspect the Project and all relevant documents pertaining to the Project. Lessee further agrees that Lessor, the Trustee and any Lessor Representative shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by Lessee to perform its obligations hereunder, or to carry out Lessor's obligations and exercise Lessor's rights under Article XII hereof, or to determine whether Lessee is in compliance with this Lease.

(End of Article IV)

ARTICLE V

TERM OF LEASE

Section 5.1 Term of Lease. This Lease shall be and shall remain in effect with respect to the Project for a Lease Term commencing on the date hereof and continuing until terminated as provided in Section 5.2 hereof.

Section 5.2 Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

(a) at the end of the last Fiscal Year for which sufficient funds have been appropriated or are legally Available as provided in and pursuant to Section 6.5 hereof;

(b) the exercise by Lessee of its option to purchase pursuant to Article X hereof;

(c) a default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII hereof; or

(d) the payment by Lessee of all Rental Payments required to be paid by Lessee hereunder.

(End of Article V)

## ARTICLE VI

### RENTAL PAYMENTS

**Section 6.1 Rental Payments.** During the Term of this Lease, Lessee shall pay Rental Payments, including the interest portions, with respect to the Project, beginning June 15, 1990, and continuing thereafter on the 15th day of each consecutive month during the Term of this Lease. The Rental Payment for a month shall equal one-sixth (1/6) of the succeeding or coincident Total Cumulative Semiannual Rental Payment Amount shown on Exhibit "E" attached hereto. The Rental Payments shall be payable to Trustee at its address specified herein, or to such other person or entity and at such other address as Trustee may designate by written notice to Lessee, in lawful money of the United States of America. As security for the payment of the Rental Payments due from the Lessee, within one (1) Business Day after receipt (or after the due date in the case of fees paid for Newton County prisoners), Lessee hereby agrees to transfer on a monthly basis to the Trustee for deposit in the Revenue Account (as defined in the Trust Agreement) the first \$106,000 of Project Revenues received by the Lessee in the month preceding the month in which each such Rental Payment is due; provided, however, that no such payment is required if: (i) the Trustee has previously advised the Lessee that amounts sufficient to satisfy such Rental Payment are already on deposit in the Agreement Payment Account (as defined in the Trust Agreement), or (ii) capitalized interest is available to satisfy such Rental Payment. The Lessee shall also transfer to the Trustee from Project Revenues any other amounts due under the Lease when notified to do so by the Trustee or Lessor. Lessee shall be entitled to a credit against such Rental Payments at the times and in the amounts set forth in, and determined in accordance with, the Trust Agreement. Lessee shall be allowed and is hereby empowered and agrees to direct by written instruction investment of all amounts held by the Trustee with respect to the Project.

**Section 6.2 Current Expense.** The obligations of Lessee under this Lease, including its obligation to pay the Rental Payments due with respect to the Project in any Fiscal Year for which this Lease is in effect, shall constitute a current expense of Lessee for such Fiscal Year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution of the State and State Laws. Nothing herein shall constitute a pledge by Lessee of any taxes or other moneys, other than moneys lawfully appropriated from time to time by or for the benefit of Lessee in its annual budget and the Net Proceeds of the Project, to the payment of any Rental Payment or other amount coming due hereunder.

**Section 6.3 Rental Payments to be Unconditional.** Except as provided in Section 6.5 hereof, the obligation of Lessee to make

Rental Payments due with respect to the Project or any other transfers and payments required hereunder shall be absolute and unconditional. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all Rental Payments and all other transfers and payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Rental Payments or other transfers and payments required under this Lease. Lessee's obligation to make Rental Payments or other transfers and payments during the Lease Term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

**Section 6.4 Intent to Continue Rental Payments.** Subject to Section 6.2 hereinabove, Lessee presently intends to continue this Lease for the entire Lease Term and to pay all Rental Payments and all other transfers and payments required hereunder. Lessee reasonably believes that funds in an amount sufficient to make all such Rental Payments and other transfers and payments will be Available for such purposes, and hereby represents that it intends to do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Rental Payments are to be made. Nothing herein shall require Lessee to appropriate any funds to make Rental Payments or any other payments due hereunder from sources other than Project Revenues. Lessee does not represent that funds to make Rental Payments will be appropriated or Available for appropriation from its general funds and is relying solely upon Project Revenues for the payment of Rental Payments.

**Section 6.5 Nonappropriation of Funds.**

(a) If sufficient funds are not appropriated by Lessee for the payment of the Rental Payments due during any succeeding Fiscal Year or any other amounts necessary to operate the Project, this Lease shall terminate and be cancelled at the end of such current Fiscal Year, and the Lessee shall immediately, upon the expiration of the said current Fiscal Year, surrender possession of the Project. Such termination and cancellation due to nonappropriation shall not be deemed an event of default hereunder. The Lessee shall provide Lessor and Trustee with written notice of such nonappropriation ninety (90) days prior to the expiration of the then current Fiscal Year for which funds were Available.

(b) Upon termination of this Lease pursuant to subsection 6.5(a) hereof, if Lessee has not delivered possession

of the Project to Lessor in accordance with Section 12.3 hereof and conveyed or released its interest in the Project as therein required, the termination shall nevertheless be effective, but Lessee shall be responsible, from and to the extent of lawfully appropriated or Available funds as provided in this Lease and the Trust Agreement, for the payment of damages in an amount equal to the sum of (i) the amount of Rental Payments thereafter coming due which are attributable to the number of days (including the ten (10) day period of Section 12.3 hereof) during which Lessee fails to take such actions, and (ii) a charge equal to twelve percent (12%) per annum of the amount of Rental Payments described in (i) above; however, this subparagraph (ii) shall not be applicable to the extent that its application would affect the validity of this Lease or violate any State Laws.

**Section 6.6 Nonsubstitution.** During the first full Fiscal Year after a termination of this Lease pursuant to subsection 5.2(a) or 5.2(c) hereof, Lessee agrees, to the extent the Lessee may legally so agree, not to purchase, lease or rent property to perform the same functions as, or functions taking the place of, those performed by the Project and agrees, to the extent the Lessee may legally so agree, not to permit such functions to be performed by any agency or entity affiliated with or hired by Lessee; however, these restrictions shall not be applicable (i) in the event Lessor shall sell its interest in the Project and the amount received from such sale, less all costs of such sale, is equal to the Purchase Price then applicable, or (ii) to the extent that the application of these restrictions would affect the validity of this Lease.

**Section 6.7 Depletion of Reserve Funds.** In the event Trustee is required to advance funds from the Reserve Account, Lessee, upon receipt of notice from Trustee with respect to such advance, shall immediately take all budgetary steps available to replenish as soon as practicable such funds advanced from the Reserve Account from appropriations of amounts legally Available to the Lessee. This obligation of Lessee to replenish advances from the Reserve Account shall continue until all advanced funds have been restored.

**Section 6.8 Determination of Taxability.** "Determination of Taxability" means a determination that the interest portion of Rental Payments under this Lease no longer qualifies as being excluded from gross income under Section 103(a) of the Code ("exempt interest") which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(a) the date on which Independent Counsel selected by Lessee is unable to deliver an opinion that the interest on the Certificates is excludable from gross income for federal income tax purposes, such opinion to be delivered within 60 days following

written notice by a Certificate Owner to Lessee requesting such an opinion (such a request to be made not more often than once in any period of 12 consecutive calendar months, to follow an inspection or investigation by such Owner of the Project and to be based upon the reasonable concern of such Owner of the excludability of such interest following such inspection or investigation);

(b) the date on which any change in law or regulation or any private ruling, technical advice or other written communication issued by the Internal Revenue Service results in the interest portion of Rental Payments under this Lease no longer qualifying as exempt interest; or

(c) the date on which Lessee shall receive notice from Trustee in writing that Trustee has been advised or notified that the Internal Revenue Service has issued a thirty-day letter or other notice which asserts that the interest portion of the Rental Payments does not qualify as exempt interest.

However, an event described in subsection (b) or (c) of this Section 6.8 can be appealed provided (i) Lessee obtains an opinion from Independent Counsel selected by Lessee which concludes that it is more likely than not that Lessee will prevail on an appeal, and (ii) the increased payments referred to in Section 6.9 hereof are deposited with the Trustee during an appeals process. These additional payments will be held by the Trustee pending the outcome of the appeal.

**Section 6.9 Effect after Determination of Taxability.** Upon a Determination of Taxability referred to in Section 6.8 hereof, at the option of the Lessee, either (i) Exhibit "E" attached hereto shall be automatically amended to reflect an interest increase of three percent (3%) per annum in the rate terms applied in the original Exhibit "E" and shall further be automatically amended to reflect changed Rental Payments commencing on the date of the first Rental Payment affected by such Determination of Taxability and in amounts sufficient to amortize over the Lease Term, at the said increased interest rate, the principal balance which was unpaid immediately prior to the date of the first Rental Payment affected by such Determination of Taxability; or (ii) on the Payment Date falling on the May 15 or November 15 as the case may be, first succeeding the date of the Determination of Taxability, Lessee shall pay, from and to the extent of lawfully appropriated or Available funds, to the Trustee, in accordance with the option to purchase of Section 10.1 hereof, for the redemption of the Certificates, an amount equal to, along with funds held by Trustee pursuant to the Trust Agreement, 108% of the aggregate principal amount of Certificates then Outstanding, plus accrued interest to the redemption date at an interest rate equal to three percent (3%) per annum above the rate in the original Exhibit "E" attached hereto,



plus any other amounts then due or past due. In the event of (i) above, Lessee shall thereafter pay future Rental Payments as set forth in the amended Exhibit "E" and Lessee authorizes the use of the funds held by the Trustee pursuant to the Trust Agreement to be used to pay such interest increase; however, notwithstanding the use by the Trustee of such funds, the Lessee shall be immediately obligated to pay Trustee, from and to the extent of lawfully appropriated or Available funds, for the benefit of and for prompt payment by Trustee to the registered owners of Certificates of Participation as of the date of each past Rental Payment affected by such Determination of Taxability, an amount equal to the aggregate amended increase in all Rental Payments prior to the Determination of Taxability.

(End of Article VI)

## ARTICLE VII

### MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

**Section 7.1 Maintenance and Modification of Project by Lessee.** During the Term of this Lease, Lessee shall maintain, preserve and keep the Project in good repair, working order and condition and from time to time make all repairs, replacements and improvements necessary to keep the Project in such condition. Lessor shall have no responsibility for such maintenance or for any such repairs, replacements or improvements. In addition, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, have the right to remodel the Project or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of this Lease. Such additions, modifications and improvements must not in any way damage the Project or cause it to be used for purposes other than those authorized under the provisions of State Law and Federal Law; the Project, upon completion of any additions, modifications and improvements made pursuant to this Section 7.1, must be verified in writing to the Lessor and the Trustee by the Design Firm to be of a value not less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this Section 7.1 may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by Lessee pursuant to this Section 7.1. If any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Project and, in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such item the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture; in such event, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon request of Lessee, if Lessee agrees to pay Lessor's expenses.

**Section 7.2 Taxes, Other Governmental Charges and Utility Charges.** During the Term of this Lease, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, pay when due all gas, steam, electricity, heat, power, telephone and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project. Lessee shall, from the same sources, also pay all property and excise taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project or any part thereof or the Rental Payments, and which become due during the Term of this Lease with respect thereto, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project. With respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profits, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any real estate or other tax upon the Project.

Lessee may, after notifying Lessor, at Lessee's expense and in Lessee's name, in good faith contest any such taxes, assessments or utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture; in such event, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments as required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, promptly pay such taxes, assessments or charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

**Section 7.3 Liability Insurance.** From and after the Completion Date, during the Term of this Lease, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, procure and maintain continuously in effect, with respect to the Project, insurance against liability in a minimum amount of One Million Dollars (\$1,000,000) per claim for injuries to or death of any

person or damage to or loss of property arising out of or in any way relating to the maintenance, use or operation of the Project or any part thereof and Lessor will, before the Completion Date, cause all Contractors to maintain similar insurance against all similar liabilities on their part and to furnish certificates evidencing such coverage. If funds to obtain such insurance are not appropriated or Available as stated in the immediately preceding sentence, Lessee shall notify Trustee of same prior to the expiration of existing insurance coverage. The Net Proceeds of all such insurance shall be applied in accordance with the provisions of Section 8.1 hereof. Lessee may at its election meet the requirements of this paragraph by assuring that a third party provide such insurance.

**Section 7.4 Lessee's Negligence.** Lessee, to the extent lawfully allowed, assumes all risks and liabilities, whether or not covered by insurance, for loss or damages to the Project and for injury to or death of any person or damages to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties and whether such property damage be to Lessee's property or the property of others, if such injury, death, loss or damage be proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee, to the extent lawfully allowed, hereby assumes responsibility for and agrees to reimburse Lessor, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law. Notwithstanding anything contained herein to the contrary, Lessee does not waive any of its common law and statutory defenses and immunities.

**Section 7.5 Property Insurance.** During the Term of this Lease, Lessee shall have and assume the risk of loss with respect to the Project and shall, from and after the Completion Date, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by the Trustee pursuant to the Trust Agreement, procure and maintain continuously in effect with respect to the Project, to the extent of the replacement value of the Improvements, all-risk insurance, subject only to the standard exclusions usually contained in such policies. All policies (or endorsements or riders) evidencing insurance required by this Section 7.5 shall be carried in the names of Lessee, Lessor and Trustee as their respective interests may appear and shall name Trustee as loss payee. Before the Completion Date, Lessor will

cause all Contractors to maintain, to the extent of the amount of such Contractor's Acquisition Contract, the all-risk insurance required by this Section 7.5 and to furnish certificates evidencing such coverage to the Trustee. The Net Proceeds of insurance required by this Section 7.5 shall be applied as provided in Section 8.1 hereof.

**Section 7.6 Workman's Compensation Insurance.** If required by State Law, from and after the Completion Date and throughout the Term of this Lease, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, either (i) carry Worker's Compensation Insurance covering all employees of the Lessee on, in, near or about the Project, or (ii) be self-insured to cover risks typically covered by Worker's Compensation Insurance. Upon request, Lessee shall furnish to Lessor certificates evidencing such coverage or self-insurance throughout the Term of this Lease. Before the Completion Date, Lessor will cause all Contractors to maintain the insurance required by this Section 7.6 and furnish certificates evidencing such coverage to the Trustee.

**Section 7.7 Other Insurance and Requirements for All Insurance.** All insurance required by this Article VII may be carried under a separate policy or a rider or endorsement; shall be taken out and maintained with responsible insurance companies having a rating of Best AA or better organized under the laws of one of the states of the United States and qualified to do business in the State; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to all parties at least thirty (30) days before the cancellation or revision becomes effective; and shall name Lessee, Lessor and Trustee as insured parties. Lessee shall deposit with Trustee policies evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy provided by the Lessee, Lessee shall furnish to Lessor and Trustee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VII, unless such insurance is no longer obtainable, in which event Lessee shall notify Lessor and Trustee of this fact. Lessor shall deposit with Trustee policies evidencing any such insurance procured by the Contractors, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy provided by the Contractors, Lessor shall furnish to Lessee and Trustee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VII, unless such insurance is no longer obtainable, in which event Lessor shall notify Lessee and Trustee of this fact.

**Section 7.8 Advances.** If Lessee shall fail to perform any of its obligations under this Lease, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, be obligated to repay all such advances on demand, with interest at the maximum rate permitted by law.

**Section 7.9 Liens.** Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, other than the respective rights of Lessor and Lessee as provided in this Lease and Permitted Encumbrances. Except as expressly provided in this Article, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, promptly take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time and reimburse Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

(End of Article VII)

## ARTICLE VIII

### DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

**Section 8.1 Damage, Destruction and Condemnation.** If (i) the Project or any portion thereof is destroyed or is damaged by fire or other casualty, or (ii) title to or the temporary use of the Project or any part thereof, or the interest of Lessee or Lessor in the Project or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee shall have the rights specified in this Section 8.1 with respect to the Net Proceeds of any insurance or condemnation award and shall either: (A) apply such Net Proceeds to the prompt repair, restoration, modification or improvement of the Project by Lessee, in which event Lessee shall be obligated to continue to pay the Rental Payments due with respect to the Project, or (B) purchase Lessor's interest in the Project on the next succeeding Payment Date falling on May 15 or November 15 for which it is possible to give notice of such intent to the Trustee no less than thirty (30) days prior to such May 15 or November 15 and by depositing with the Trustee on such May 15 or November 15 an amount equal to the Purchase Price applicable for that date together with all Rental Payments and other amounts then due or past due less the funds held by Trustee on such date pursuant to the Trust Agreement, in which event the Net Proceeds may be used for such purchase.

**Section 8.2 Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement of the Project or to pay the Purchase Price pursuant to Article X hereof, Lessee shall, from and to the extent of lawfully appropriated or Available funds in excess of the Rental Payments required by this Lease and the funds held by Trustee pursuant to the Trust Agreement, either (i) complete the work and pay any cost in excess of the amount of the Net Proceeds, in which event Lessee agrees that, if by reason of any such insufficiency of the Net Proceeds Lessee shall make any payments pursuant to the provisions of this Section 8.2, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the Rental Payments due with respect to the Project, or (ii) pay any cost in excess of Net Proceeds necessary to pay the purchase amount set forth in Section 8.1 hereof.

**Section 8.3 Cooperation of Lessor.** Lessor shall cooperate fully with Lessee, at the expense of Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 8.1 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the

extent it may lawfully do so, permit Lessee to litigate in any proceeding resulting therefrom in the name of and on behalf of Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of Lessee, which shall not be unreasonably withheld or delayed.

(End of Article VIII)



## ARTICLE IX

### LESSEE'S EQUIPMENT; WARRANTIES

**Section 9.1 Installation of Lessee's Equipment.** Lessee may at any time and from time to time after the Completion Date, in its sole discretion and at its own expense, install items of movable machinery and equipment in or upon the Project, which items shall be identified by tags or other symbols affixed thereto as property of Lessee not included in the Project. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time, provided that Lessee shall repair and restore any and all damage to the Project resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section 9.1 under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Project. Notwithstanding anything contained herein to the contrary, this Section 9.1 shall not apply to any furniture, fixtures or equipment acquired with the proceeds from the sale of the Certificates.

**Section 9.2 Design of Project.** The design of the Project shall be determined by the Design Firm that has been selected by Lessee, as agent for Lessor as provided for in Section 3.1 hereof. Lessor shall not be responsible for contracting for the design of the Project.

**Section 9.3 Assignment of Warranties.** Lessor hereby assigns to Lessee for and during this Term of this Lease, all of its interest in all warranties and guarantees, express or implied, issued on or applicable to the Project, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

**Section 9.4 Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE PROJECT.

(End of Article IX)

## ARTICLE X

### OPTION TO PURCHASE

**Section 10.1 When Available.** On or after May 15, 2000, Lessee shall have the option to purchase Lessor's interest in the Project on any Payment Date falling on May 15 or November 15 during the remainder of the Term of this Lease for an amount equal to the sum of: (i) the Concluding Payment listed on Exhibit "E" hereof for the May 15 or November 15 (as the case may be) on which such option to purchase is to be exercised, plus (ii) the Total Cumulative Semiannual Rental Payment Amount listed on Exhibit "E" hereof for the May 15 or November 15 (as the case may be) on which such option to purchase is to be exercised, plus (iii) any amounts then due or past due, but only in the manner provided in this Article X. However, in the event of a Determination of Taxability as set forth in Section 6.8 hereof, Lessee shall have, on the Payment Date falling on the May 15 or November 15 as the case may be, first succeeding the Determination of Taxability, the option to purchase Lessor's interest in the Project for an amount equal to the amount set forth in Section 6.9 hereof. The option described in the immediately preceding sentence shall replace the option described in the first sentence of this Section 10.1, if it would otherwise apply on such Payment Date for the applicable Payment Date only, and the option of the first sentence of this Section 10.1 will apply to Payment Dates before and after such Payment Date.

**Section 10.2 Exercise of Option.** Lessee shall give notice to Lessor and Trustee of its intention to exercise its option to purchase not less than thirty (30) days prior to the Payment Date on which the option is to be exercised and shall deposit with Trustee on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due and the applicable Purchase Price less the funds held by Trustee on such date pursuant to the Trust Agreement. The closing shall be on the date on which the option is to be exercised at an office designated by Lessor.

**Section 10.3 Release of Lessor's Interest.** Upon exercise by Lessee of its option to purchase and payment in full of all amounts due and owing hereunder, Lessee shall have no further obligations under this Lease, and Lessor and its assigns shall take all actions necessary to authorize, execute and deliver to Lessee any and all documents necessary to vest in Lessee all of Lessor's or its assigns' right, title and interest in and to the Project, free and clear of all liens, leasehold interests and encumbrances created or incurred by Lessor, including, if necessary, a release of any and all liens or interests created under the provisions of this Lease and the Deed of Trust, and excluding the Permitted Encumbrances other than this Lease and the Deed of Trust.

**Section 10.4 Lessor's Bankruptcy.** In the event of the filing of a petition in bankruptcy by or against Lessor, if consented to or acquiesced in by Lessor, or upon the expiration of sixty (60) days after the filing of a petition in bankruptcy against the Lessor if said petition in bankruptcy is not dismissed within such sixty (60) day period, Lessee shall have the option to purchase Lessor's and/or its assigns interest in the Project, in whole but not in part, on the Payment Date falling on the May 15 or November 15 (as the case may be) first succeeding the filing of the petition or the expiration of sixty (60) days after the filing of the petition (as the case may be) for an amount equal to the sum of: (i) the Concluding Payment listed on Exhibit "E" hereof for the May 15 or November 15 (as the case may be) on which such option to purchase is to be exercised, plus (ii) the Total Cumulative Semiannual Rental Payment Amount listed on Exhibit "E" hereof for the May 15 or November 15 (as the case may be) on which such option to purchase is to be exercised. Lessee shall be entitled to exercise its option under this section immediately upon the occurrence of the events set forth within this section and shall not be bound by the formal requirements of Section 10.2.

(End of Article X)

## ARTICLE XI

### ASSIGNMENT, SUBORDINATION, SUBLEASING, MORTGAGING AND SELLING

**Section 11.1 Assignment by Lessor.** Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Rental Payments and other transfers and amounts due hereunder, and the Project may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment or reassignment shall be effective unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee or reassignee. The parties recognize that Lessor has assigned its right, title and interest in this Lease to Trustee, pursuant to the DMS Lease Assignment Agreement Relating to a Detention Facility Acquisition Project, and has granted to Trustee a lien on the Project, pursuant to the Deed of Trust. Lessee shall pay all Rental Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments.

**Section 11.2 Assignment and Subleasing by Lessee.** Except as otherwise provided in this Section 11.2, this Lease may not be assigned or subleased by Lessee without the written consent of Lessor. Lessee shall retain the right to sublease the Project without the written consent of Lessor to any tenant which Lessee determines to be suitable, provided that Lessee shall have first obtained the written opinion of Independent Counsel stating that such sublease will not cause the Lease or Certificates to lose their tax-exempt status under the Code. Lessor shall be the third party beneficiary of any such subleases and any amounts actually received by Lessor as such beneficiary shall be credited against Rental Payments due hereunder. Lessor shall not be required to enforce or to otherwise recognize the rights of other parties under any such subleases, it being the intent hereof that Lessor will look solely to Lessee for Rental Payments and the enforcement of its rights under the Lease. Any sublease by Lessee shall expressly provide that it shall automatically terminate upon the termination of this Lease pursuant to subsection 5.2(a) or 5.2(c) hereof.

**Section 11.3 Restriction on Mortgage or Sale of Project by Lessee.** Lessee will not mortgage, sell, assign, transfer or convey its interest in the Project or any portion thereof during the Term of this Lease without the written consent of Lessor.

(End of Article XI)

## ARTICLE XII

### EVENTS OF DEFAULT AND REMEDIES

Section 12.1 Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Project, any one or more of the following events:

(a) Except as provided by Section 6.5 hereof with respect to the failure of the Lessee to appropriate sufficient funds, failure by Lessee to make a Rental Payment or any other payment required to be paid hereunder at the time specified herein.

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed by it hereunder or under the Trust Agreement, other than as referred to in subsection (a) of this Section 12.1, for a period of thirty (30) calendar days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(c) The discovery by Lessor that any material statement, representation, or warranty made by Lessee in this Lease, the Trust Agreement or in any writing ever delivered by Lessee pursuant to or in connection with this Lease is false, misleading or erroneous in any material respect.

(d) The filing by Lessee of a voluntary petition in bankruptcy, or the failure by Lessee to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its operations at the Project, or the adjudication of Lessee as a bankrupt, or any assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

(e) Any event which shall occur or any condition which shall exist the effect of which is to cause (i) more than \$100,000.00 of aggregate indebtedness of Lessee to become due prior to its stated due date, and (ii) a lien to be placed on the Project or Lessee's interest in the Project.

(f) A final judgment against Lessee for an amount in excess of \$100,000.00 shall be outstanding for any period of 60 days or more from the date of its entry and shall not have been discharged in full or stayed pending appeal, and a lien is placed on the Project or Lessee's interest in the Project.

(g) The replenishment by Lessee of the Reserve Account referred to in Section 6.7 hereof is not accomplished as soon as reasonably and legally practicable following the receipt of notice by Lessee from Trustee that funds have been advanced from the Reserve Account, but in no event shall such period to accomplish the replenishment of the Reserve Account exceed one (1) year after Lessee receives such notice; provided, however, that no event of default shall be deemed to have occurred if the failure of the Lessee to replenish the Reserve Account is due to the Lessee's failure to appropriate funds for such purpose, in which event the Lease shall terminate pursuant to Section 6.5 hereof.

The provisions of this Section 12.1 and of Section 12.2 hereof are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligations under this Lease with respect to the Project, other than the obligation of Lessee to pay Rental Payments which shall be payable when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability or during any other delays which are a direct consequence of the force majeure inability, and the time for completion of the Project shall be extended to cover such delays. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from Lessee's negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations under this Lease; however, the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of Lessee, and Lessee shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in Lessee's judgment, unfavorable to Lessee.

**Section 12.2 Remedies on Default.** Whenever any event of default referred to in Section 12.1 hereof shall have occurred and be continuing with respect to the Project, Lessor shall have the right, at its option and without any further demand or

notice, to take one or any combination of the following remedial steps:

(a) With or without terminating this Lease, by written notice to Lessee, declare an amount equal to all amounts coming due and payable under this Lease during Lessee's then current Fiscal Year to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) With or without terminating this Lease, by written notice to Lessee, request Lessee to, and Lessee agrees that it will, promptly surrender possession of the Project to Lessor and permit Lessor or any party designated by Lessor quiet enjoyment and use of the Project;

(c) With or without terminating this Lease, enter upon the property where the Project is located and take immediate possession of the Project;

(d) Sell or lease the Project for the sole account of Lessor or sublease the Project for the account of Lessee, holding Lessee liable for all Rental Payments and other payments due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such sale, lease or sublease less the costs of such sale, lease or sublessee and the amounts coming due and payable under this Lease during Lessee's then current Fiscal Year; or

(e) Exercise any other right, remedy or privilege which may be available to it under applicable laws of the State of Texas or any other applicable law or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Project.

In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for expenses, including court costs when and if deemed appropriate and awarded by a court of competent jurisdiction, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor when it is finally adjudicated by a court of competent jurisdiction that Lessee is in default of this Lease.

Notwithstanding any provision contained in this Section 12.2, in the case of an event of default referred to in subsection 12.1(a) hereof, Lessor shall not terminate this Lease until amounts held by Trustee in the Reserve Account are less than the sum of (a) the principal, premium, if any, and interest payments due on the Certificates of Participation at the next succeeding Certificate Payment Date, as defined in the Trust

Agreement, and (b) the fees and expenses of the Trustee due in accordance with Section 7.07 of the Trust Agreement.

**Section 12.3 Return of Project.** Upon the expiration or termination of this Lease prior to the payment of all Rental Payments in accordance with Section 6.1 hereof or prior to payment of the Purchase Price in accordance with Article X hereof, Lessee shall deliver possession of the Project to Lessor in the condition, repair, appearance and working order required in Section 7.1 hereof, shall, within ten (10) days thereafter, release its interest in the Project granted by this Lease, and shall remove any movable machinery and equipment of Lessee which has been installed in or upon the Project in accordance with Section 9.1 hereof.

**Section 12.4 Delay; Notice.** No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle any party to exercise any remedy reserved to it in this Lease it shall not be necessary to give any notice, other than such notice as may be required in this Lease.

**Section 12.5 No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity.

**Section 12.6 Agreement to Pay Attorney's Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of funds or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and such other expenses so incurred by the nondefaulting party.

**Section 12.7 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 12.8 Late Charges.** Whenever any event of default referred to in subsection 12.1(a) hereof shall have occurred and be continuing with respect to the Project, Lessor shall have the right, at its option and without any further demand or notice, to



require a late payment charge equal to twelve percent (12%) per annum of the delinquent Rental Payment, and Lessee shall be obligated, from and to the extent of lawfully appropriated or Available funds and the funds held by the Trustee pursuant to the Trust Agreement, to pay the same immediately upon receipt of Lessor's written invoice therefor; however, this Section 12.8 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease or violate any State Laws.

(End of Article XII)

## ARTICLE XIII

### TITLE

Section 13.1 Title. During the Term of this Lease, legal title to the Project and any and all repairs, replacements, substitutions and modifications to it shall be in Lessor. Lessee shall not permit any lien or encumbrance of any kind to exist against the title to the Project, other than Permitted Encumbrances. Upon termination of this Lease for either of the reasons specified in subsections 5.2(b) and (d) hereof, full and unencumbered, with the exception of the Permitted Encumbrances other than this Lease and the Deed of Trust, legal title to the Project shall immediately be conveyed by Lessor to Lessee, and Lessor and Trustee shall execute and deliver to Lessee such documents as Lessee may request to evidence the conveyance of such title to Lessee and the termination of Lessor's and Trustee's interests in the Project. Upon the occurrence of an event of default hereunder and for so long as such event of default is continuing, all interest of the Lessee in the Project shall be revested immediately in and shall revert to Trustee, as assignee of Lessor under the DMS Lease Assignment Agreement, by and between Lessor and Trustee, free of any right, title or interest of Lessee, unless Trustee elects otherwise.

(End of Article XIII)

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

**Section 14.1 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given on the earlier of (i) delivery, or (ii) three (3) days following deposit in the United States mail in certified or registered form with postage fully prepaid to the addresses shown in the first paragraph hereof or, in the case of the Trustee, to the Trustee's address as shown in the Trust Agreement. Lessor, Lessee, and Trustee by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 14.2 Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns, as and to the extent that assignments are permitted by this Lease.

**Section 14.3 Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather the entire Lease will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Lease is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

**Section 14.4 Amendments, Changes and Modifications.** This Lease may be amended or any of its terms modified only by written amendment authorized and executed by Lessee and Lessor and pursuant to the provisions of Section 8.01 of the Trust Agreement.

**Section 14.5 Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, if necessary, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required and as are within the legal authority of the Lessee to provide for correcting any inadequate or incorrect description of the Project hereby leased or intended so to be, or for carrying out the expressed intention of this Lease.

**Section 14.6 Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one

and the same instrument. This Lease shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

**Section 14.7 Applicable Law.** This Lease shall be governed by and construed in accordance with State Laws (exclusive of conflicts of law principles) and will, unless otherwise required under State Law, to the maximum extent practicable, be deemed to call for performance in Harris County, Texas. Courts within the State shall have jurisdiction over any and all disputes between the parties hereto, whether in law or equity, including, without limitation, any and all disputes arising out of or relating to this Lease. The parties hereby consent to and agree to submit to the jurisdiction of such courts. To the extent permitted by State Law, venue in any such dispute whether in federal or state court shall be laid in Harris County, Texas.

**Section 14.8 Lessor and Lessee Representatives.** Whenever under the provisions of this Lease the approval of Lessor or Lessee is required, or Lessor or Lessee is required to take some action at the request of the other, such approval of such request shall be given for Lessor by a Lessor Representative and for Lessee by a Lessee Representative, and any party hereto shall be authorized to rely upon any such approval or request.

**Section 14.9 Captions, Gender.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles or Sections of this Lease. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**Section 14.10 Complete Agreement.** This Lease supersedes and takes the place of any and all previous agreements entered into between the parties hereto with respect to the lease of the Project.

**Section 14.11 Usury.** All agreements and transactions between Lessee and Lessor, whether now existing or hereafter arising, whether contained herein or in any other instrument, and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of prepayment, demand for payment or otherwise, shall the amount contracted for, charged or received by Lessor from Lessee for the use, forbearance, or detention of the principal portion of the Rental Payments or interest thereon, which remains unpaid from time to time, exceed the maximum amount permissible under applicable law, it particularly being the intention of the parties hereto to conform strictly to State Laws and Federal Laws, whichever is applicable. Any interest payable hereunder or under any

other instrument relating to the lease-purchase evidenced hereby that is in excess of the legal maximum under State Law and Federal Law, shall, in the event of prepayment, demand for payment or otherwise, be automatically, as of the date of such prepayment, demand or otherwise, applied to a reduction of the principal portion of the Rental Payments and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of the principal portion of the Rental Payments, such excess shall be refunded to Lessee. To the extent permitted by State Law and Federal Law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of this Lease, all interest at any time contracted for, charged or received from Lessee in connection with the loan, so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof.

(End of Article XIV)

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Lease to be executed in its name by its duly authorized officer, as of the date first above written.

LESSOR:

DIVERSIFIED MUNICIPAL SERVICES  
OF TEXAS, INC., a Texas  
corporation

By: \_\_\_\_\_  
H. Joseph Vaughn,  
President

LESSEE:

NEWTON COUNTY, TEXAS

ATTEST:

By: \_\_\_\_\_  
Melba Canty,  
County Clerk

By: \_\_\_\_\_  
Lee Roy Fillyaw,  
County Judge

(SEAL)



EXHIBIT "A" TO LEASE AGREEMENT

DESCRIPTION OF LAND AND IMPROVEMENTS

The legal description of the Land consists of the legal description contained in Attachment I hereto, and is shown on the map contained in Attachment II hereto.

The Improvements to be installed on the Land are described generally as follows:

Three hundred (300) bed Detention Facility as shown in the sketch attached as Attachment III hereto and as further described in the Plans and Specifications therefor.



ATTACHMENT I TO EXHIBIT "A"

Being 29.747 acres of land out of Abstract 222, H. & T. C. R. R. Section 49, Newton County, Texas, and being a part of that "Tract One" of 40.001 acres described in a "Warranty Deed With Vendor's Lien" from Clifton B. Ableson, et ux, to Robert D. Williams dated October 1, 1980 and recorded in Volume 299, Page 333 of the Deed Records of Newton County, Texas, said 29.747 acres being more fully described as follows:

Beginning at the Southeast corner of the above described 40.001 acre tract, a concrete monument found for corner;

Thence South 65° 07' 48" West, 844.33 feet to the Southwest corner of the said 40.001 acre tract, an iron stake found for corner at a fence corner;

Thence North 24° 58' 30" West, with the West line of the said 40.001 acre tract, 1046.09 feet to the Southwest corner of a 3.168 acre tract surveyed this day out of the said 40.001 acre tract, an iron stake set for corner;

Thence North 65° 01' 30" East, 480.00 feet to the Southeast corner of the said 3.168 acre tract, an iron stake set for corner;

Thence North 24° 58' 30" West, 240.00 feet to a East line corner of the said 3.168 acre tract, an iron stake set for corner;

Thence South 65° 01' 30" West, 440.00 feet to another East line corner of the said 3.168 acre tract, an iron stake set for corner;

Thence North 24° 58' 30" West, 578.92 feet to the most Northerly Northeast corner of the said 3.168 acre tract in the North line of the said 40.001 acre tract and in the Southeast edge of the old Newton-Burkeville Road, an iron stake set for corner;

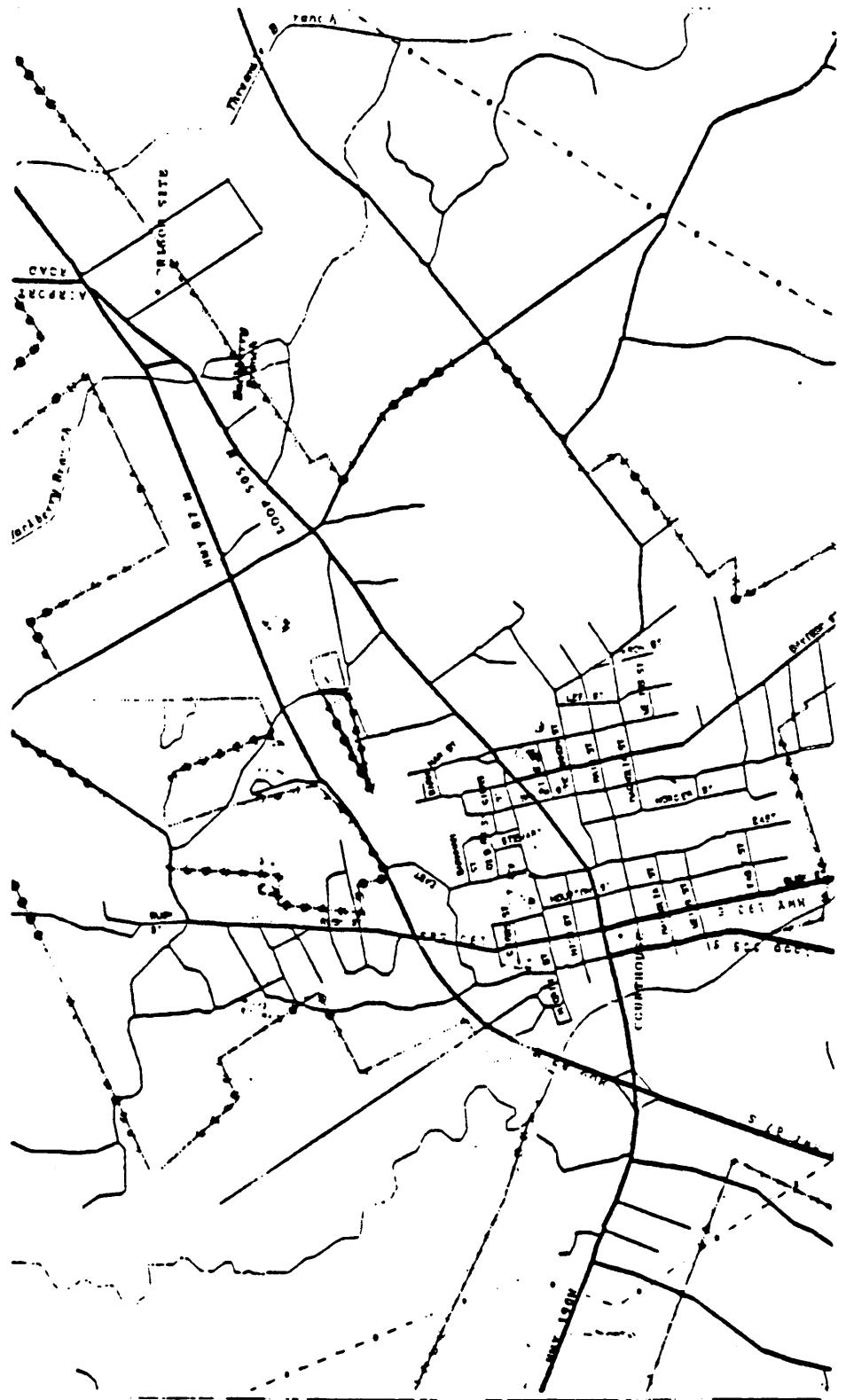
Thence North 39° 42' 16" East, with the North line of the said 40.001 acre tract and the Southeast edge of the said old road, 434.70 feet to the Northwest corner of a 6.459 acre tract surveyed this day out of the said 40.001 acre tract in the Southeast right-of-way of State Highway No. 87, an iron stake found for corner;

Thence South 38° 36' 19" East, 841.77 feet to the Southwest corner of the said 6.459 acre tract, an iron stake set for corner;

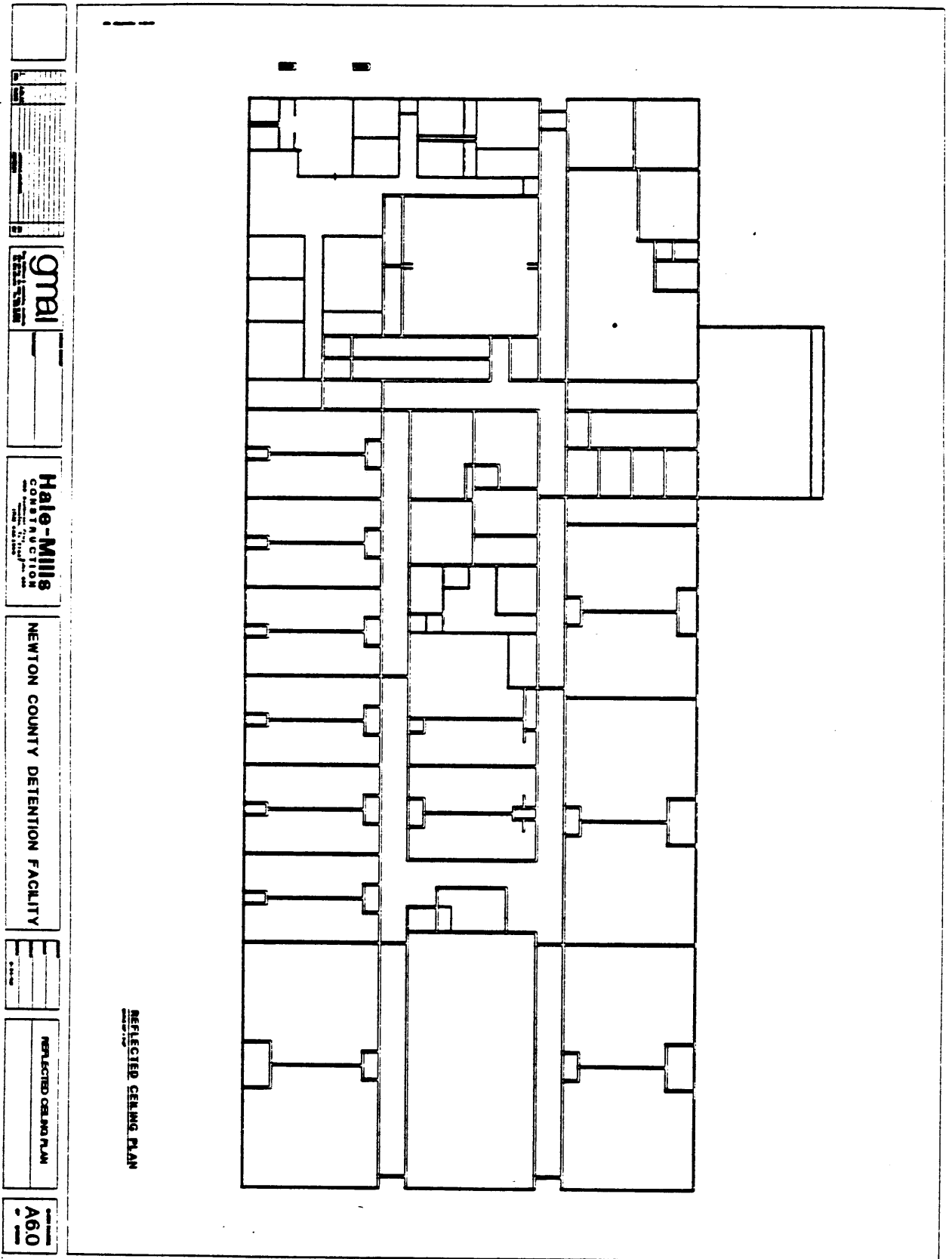
Thence North 65° 07' 01" East, 215.00 feet to the Southeast corner of the said 6.459 acre tract in the East line of the said 40.001 acre tract, an iron stake set for corner;

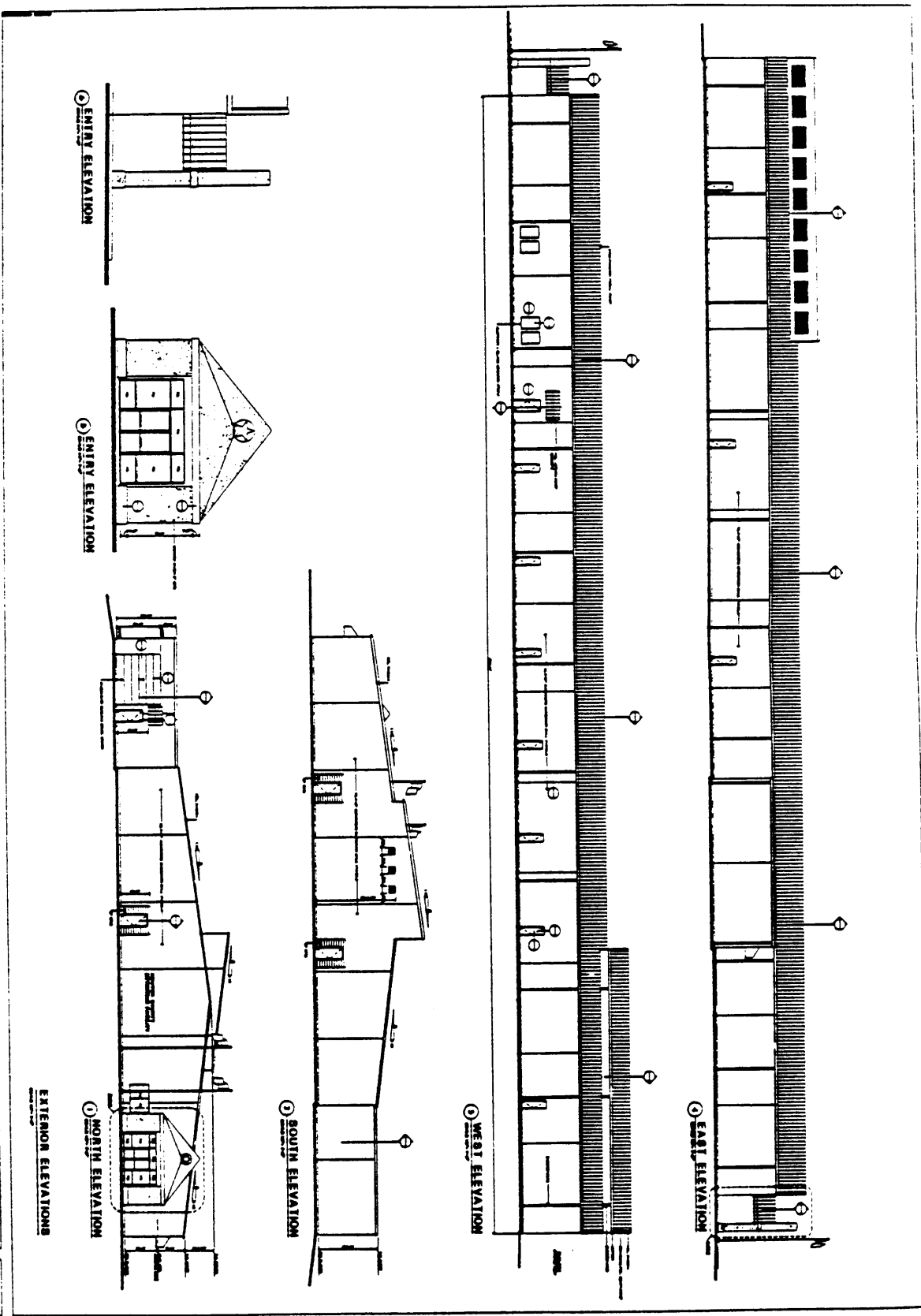
Thence South 24° 52' 59" East, with the East line of the said 40.001 acre tract, 1234.07 feet to the Place of Beginning containing 29.747 acres of land.

ATTACHMENT II TO EXHIBIT "A"

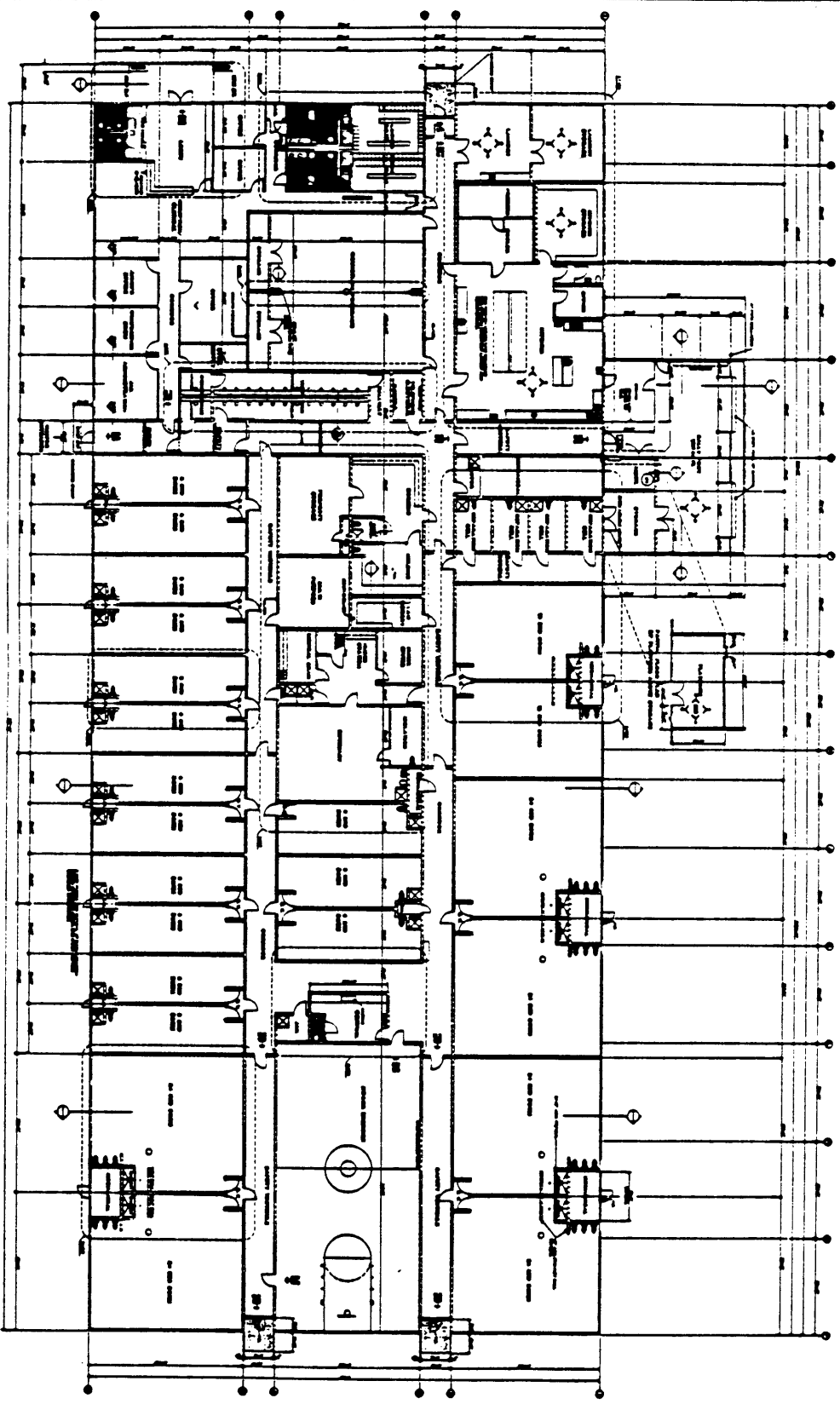


ATTACHMENT III TO EXHIBIT "A"





			<p><b>Newton County Detention Facility</b></p>		<p>EXTERIOR ELEVATIONS</p>	<p>A30</p>
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**GENERAL NOTES:**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND ALL APPLICABLE LOCAL, STATE AND FEDERAL CODES.
2. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE LOCAL BUILDING DEPARTMENT.
3. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE, NATIONAL PLUMBING CODE, NATIONAL MECHANICAL CODE AND ALL APPLICABLE LOCAL, STATE AND FEDERAL CODES.
4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED BUDGET.

**LEGEND:**

- 1. WALL TYPE
- 2. FLOOR TYPE
- 3. CEILING TYPE
- 4. DOOR TYPE
- 5. WINDOW TYPE
- 6. STAIR TYPE
- 7. ELEVATOR TYPE
- 8. MECHANICAL TYPE
- 9. ELECTRICAL TYPE
- 10. PLUMBING TYPE

**GENERAL NOTES:**

- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND ALL APPLICABLE LOCAL, STATE AND FEDERAL CODES.
- 2. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE LOCAL BUILDING DEPARTMENT.
- 3. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE, NATIONAL PLUMBING CODE, NATIONAL MECHANICAL CODE AND ALL APPLICABLE LOCAL, STATE AND FEDERAL CODES.
- 4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
- 5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED BUDGET.

**FLOOR PLAN - SCHEME B**

DATE: 10/15/2010

SCALE: 1/8" = 1'-0"

<b>Hale-Mills</b> CONSTRUCTION <small>1000 W. 10TH ST. SUITE 100          NEWTON, MS 38662</small>	
<b>NEWTON COUNTY DETENTION FACILITY</b>	
SHEET NO.	FLOOR PLAN
DATE	A20

EXHIBIT "B" TO LEASE AGREEMENT

(FORM OF)

CERTIFICATE OF OFFICER

The undersigned, being the duly qualified and acting County Judge of the County of Newton, Texas ("Lessee"), does hereby certify as follows:

1. Lessee is a duly constituted and existing political subdivision of the State of Texas and has all necessary power and authority to enter into and perform its duties under the Lease Agreement dated as of June 15, 1990 (the "Lease") by and between Lessee and Diversified Municipal Services of Texas, Inc. (the "Corporation").

2. I am the duly elected, qualified and acting County Judge of Lessee and, as such officer, am familiar with the authority, actions and books and records of Lessee.

3. Attached hereto and marked Exhibit "A" is a true and correct copy of an extract of minutes of a regular meeting of the Commissioners Court of Lessee, duly called and held on the 3rd day of July, 1990, at which meeting a quorum was present and acting through out. The action taken by the Commissioners Court at such meeting insofar as it related to the agreements described in paragraph 4 hereof, has not since been rescinded, amended or repealed.

4. The Lease and the Trust Agreement Relating to a Detention Facility Acquisition Project dated as of June 15, 1990 (the "Trust Agreement") by and among Lessee, the Corporation and NCNB Texas National Bank ("Trustee") as trustee have been duly authorized by Lessee, have been executed and delivered by me in my capacity as the County Judge of Lessee, and are legal, valid and binding contracts of Lessee.

5. The execution and delivery of the Lease and the Trust Agreement and the compliance by Lessee with the provisions thereof will not conflict with, or constitute on the part of Lessee a breach of, or a default under, any existing law, court or administrative regulation, decree or order or any agreement or other instrument to which Lessee is a subject or by which it or its properties are or may be bound.

6. Lessee is authorized to obligate itself to make the payments required by and in accordance with the Lease.

7. Lessee has duly performed all of its obligations to be performed concurrent with or prior to the execution of this Certificate, and each of its representations, warranties and

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covenants contained in the Lease and the Trust Agreement is true and correct as of the date hereof.

8. Lessee has duly authorized all necessary action to be taken by Lessee for the financing of the Project to be acquired under the Lease and for the execution, delivery, receipt and due performance of the Lease and any and all such other agreements and documents as may be required to be executed and delivered by Lessee in order to carry out, give effect to and consummate the transactions contemplated by the Lease.

9. All appropriate legal and fiscal reviews and approvals have been obtained in connection with the approval of the Lease and any and all other agreements relating thereto.

10. Lessee recognizes that certificates of participation (the "Certificates") will be delivered in accordance with the terms of the Trust Agreement.

11. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before or by any court, public board or body, pending or threatened against Lessee (or, to my knowledge, any meritorious basis therefor) (i) contesting the due organization and valid existence of Lessee or the authority of its officers; (ii) challenging the validity, due authorization and execution of the Lease or the Trust Agreement; or (iii) attempting to limit, enjoin or otherwise restrict or prevent Lessee from entering into the Lease or the Trust Agreement and the transactions contemplated thereby, including, but not limited to, the development, construction and operation of the Project, as such term is defined in the Lease.

12. No officer or employee of Lessee has any pecuniary interest, directly or indirectly, in any contract, employment, lease, purchase or sale made or to be made in connection with the Lease or the Trust Agreement or the transactions contemplated thereby.

13. I further certify that the improvements contemplated by the execution of these documents are necessary and essential to house, within Newton County, a detention facility and related facilities of Lessee.

14. It is reasonably anticipated that adequate funds will be available through annual appropriations of Project Revenues to make the Rental Payments required by the Lease.

15. Lessee has obtained or will cause to be obtained from a reputable insurance company qualified to do business in the State of Texas such policies of insurance as are required by the Lease.

16. There is no fact known to the undersigned which materially adversely affects the business, operations, affairs, condition (financial or otherwise), properties or assets of the Lessee or the Project (as such term is defined in the Lease).

17. Lessee will not take or omit to take any action which will in any way result in the proceeds from the sale of the Certificates being applied in a manner inconsistent with the provisions of the Lease or the Trust Agreement.

18. There is no existing contract for the management, maintenance or operation of the Project other than that certain Operation, Maintenance and Management Agreement for a Three Hundred (300) Bed Detention Facility by and between the County of Newton, Texas and Texas Detention Management, Inc., dated as of June 15, 1990. That certain Agent Contract, undated, between Lessee and Baker-Dover, Inc. is not effective as of the date hereof.

19. All of the representations and warranties of Lessee in the Lease and the Trust Agreement are true and correct as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand on the \_\_\_\_\_ day of \_\_\_\_\_, 1990.

BY: \_\_\_\_\_  
Lee Roy Fillyaw,  
County Judge



Exhibit "A"

[Form of Enabling Minutes Omitted]

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EXHIBIT "C" TO LEASE AGREEMENT

(FORM OF OPINION OF SPECIAL COUNSEL TO LESSEE)  
(To be retyped on letterhead of Special Counsel)

July \_\_\_\_, 1990

Newton County, Texas  
Newton County Courthouse  
Highway 190  
Newton, Texas 75966

Winstead Sechrest & Minick P.C.  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270

Diversified Municipal  
Services of Texas, Inc.  
132 Ulen Boulevard  
Lebanon, Indiana 46052

Steven D. Katz, A  
Professional Corporation  
1600 Smith, Suite 4910  
Houston, Texas 77002

NCNB Texas National Bank  
700 Louisiana, 32nd Floor  
Houston, Texas 77002

Prager, McCarthy & Lewis  
1 Maritime Plaza, 11th Floor  
San Francisco, California 94111

Stoel, Rives, Boley, Jones & Grey  
900 Southwest 5th Avenue  
Portland, Oregon 97204

Allstate Insurance Co.  
Attn: Investment Accounting  
Unit Manager A-5  
Allstate Plaza South  
Northbrook, Illinois 60062

Re: Lease Agreement dated as of June 15, 1990 by and between  
Diversified Municipal Services of Texas, Inc. ("Company")  
and the County of Newton, Texas

Gentlemen:

This firm has acted as special counsel to Newton County with respect to the Lease Agreement described above (the "Lease") and the various related matters as more particularly set forth in this opinion letter. I have been requested to render a legal opinion to you with respect to certain matters in connection therewith.

1. Basis of opinion and examination. At the outset of this opinion letter, we would like to state the nature of our involvement with this transaction because it might bear upon your reliance placed by you on our opinions. While we are special counsel to Newton County, we call your attention to the fact that

our employment is limited to specific matters which have been referred to us in relation to this transaction, and that Newton County may have been involved in matters of a legal nature, including this transaction, about which we have not been consulted. In addition, as you know, Newton County has a duly elected county attorney which may have been consulted on matters concerning this transaction wherein this firm was not involved. In connection with this opinion, we have examined only the specific documents described herein, and have not undertaken a comprehensive review of Newton County's general legal or fiscal matters.

In rendering the following opinions, we have examined and reviewed the following documents:

1. Lease Agreement (the "Lease"), dated as of June 15, 1990, by and among the Diversified Municipal Services of Texas, Inc. ("Company") and the County of Newton, Texas.
2. Trust Agreement Relating to a Detention Facility Acquisition Project ( "Trust Agreement"), dated as of June 15, 1990, by and among the County, the Company and NCNB Texas National Bank ("Trustee") pertaining, in part, to that certain Detention Facility (herein so called) located in Newton County, Texas.
3. County Assignment and Agency Agreement ("County Assignment Agreement"), dated as of June 15, 1990.
4. Acquisition Contract relating to the design of the detention facility ("Design Contract") dated as of June 15, 1990.
5. Operation, Maintenance and Management Agreement for a three hundred (300) bed facility ("Management Contract") dated as of June 15, 1990.
6. Official Statement Relating To \$10,3000,000 Certificates of Participation ("Certificate of Participation") Evidencing Fractional Undivided Interest of the Owners thereof in Rental Payments to be made by the County of Newton, Texas ("Official Statement"), dated as of June 15, 1990, pertaining to the issuance and ownership of Certificates of Participation (herein so called) in the Detention Facility.
7. Affidavit and Certificate of Compliance with Section 351.1035 of the Local Government Code and Proclamation executed by Lee Roy Fillyaw, County Judge of Newton County, Texas in connection therewith.
8. Notice of and Minutes of the Special Meeting of the Newton County Commissioners Court dated February 12, 1990, relative to the issuance of a Request for Proposals pursuant to Section 351.102 of the Local Government Code

for a 300 bed detention facility.

9. County's Affidavit of Publication and Notice of Publication of Newton County's Request for Proposals for a 300 bed detention facility as published.
10. Notice of and Minutes to the Special Meeting of the Newton County Commissioners Court dated March 19, 1990, comprising the acceptance of the proposal of Texas Detention Management, Inc.
11. Notice of and Minutes to a Special Meeting of the Newton County Commissioners Court dated July 3, 1990 relative to the authorization, execution and delivery of legal documents for the private jail transaction between Newton County and Texas Detention Management, Inc. and related entities.

With respect to various matters of fact material to our opinion, we have, when relevant facts were not independently established by us, relied upon the representations contained in the documents above referenced and certificates and statements of the county officials and related parties. We have assumed the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such documents. In addition, we have assumed the genuineness of all signatures, the due authorization, execution and delivery of all documents by all parties thereto (other than that of the County to the Lease, Trust Agreement, Design Contract, Management Agreement and County Assignment Agreement), the due authority of all persons executing such documents except such persons executing such documents on behalf of the County and the authenticity of all documents, records, instruments and certificates furnished to us and the accuracy of all statements of fact therein, as to which we have made no independent investigation.

2. Opinion. Except as otherwise qualified herein, based upon the foregoing examination, we are of the opinion that:

1. Newton County is a political subdivision of the State of Texas (the "State"), duly organized, existing and operating under the Constitution and laws of the State.

2. Newton County is authorized and has full power under the Constitution and laws of the State to enter into the Lease, the County Assignment Agreement, the Management Agreement, the Design Contract and the Trust Agreement and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Lease, the County Assignment Agreement, the Design Contract, the Management Agreement and the Trust Agreement have been duly authorized, approved, executed and delivered by and on

behalf of Lessee, and the Lease, the County Assignment Agreement, the Design Contract, the Management Agreement, and the Trust Agreement are valid and binding obligations of Lessee enforceable in accordance with their terms, except to the extent such enforceability is limited by State Laws and Federal Laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors rights and other extraordinary equitable rights and remedies.

4. To the best of our actual knowledge, the authorization, approval and execution of the Lease, the County Assignment Agreement, the Design Contract, the Management Agreement, and the Trust Agreement and all other proceedings of Newton County relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting laws, public contracting laws and all other applicable laws, rules and regulations of the State of Texas.

5. To the best of our actual knowledge, Newton County is not in violation of and the execution and delivery of the Lease, the County Assignment Agreement, the Design Contract, the Management Agreement, and the Trust Agreement and the performance of the obligations of Newton County thereunder will not result in the violation of any constitutional, statutory or other limitation applicable to Newton County, including any relating to the manner, form or amount of indebtedness which may be incurred by Lessee and relating to the use of the Project as described in the Lease, nor will such execution and performance result in any violation of any term or provision of any mortgage, lease, agreement or other instrument, or of any license, permit, judgment, decree, governmental order, statute, rule or regulation by which Newton County is bound or to which any of Newton County's assets is subject.

6. Newton County is exempt from State sales and/or use taxes with respect to items sold, leased, or rented to, used or consumed by Newton County.

7. To the best of our actual knowledge, there is no judgment or decree outstanding or pending and no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body and no notice has been received by the undersigned of any intent to file any lawsuit or administrative claim or any other action of a type that challenges or would materially adversely effect: the organization or existence of Newton County; the authority of the County or its officers; the proper authorization, approval and execution of the lease, the County Assignment Agreement, the Design Contract, the Management Agreement, the Trust Agreement and the other documents contemplated thereby; the appropriation of funds to pay the Rental Payments coming due under the Lease; or the ability of Lessee otherwise to perform its obligations under the Lease, the County Assignment Agreement, the Design Contract, the Management Agreement, and the Trust Agreement and the transactions contemplated thereby,

including but not limited to, the development, construction and operation of the Project, as such term is defined in the Lease.

8. No authorization, consent, approval, license, permit or review of any court or public or governmental body or regulatory authority is required for the authorization, execution and delivery by Newton County of the Lease, the Design Contract, the Management Agreement, the Trust Agreement or the County Assignment Agreement or for the performance by Newton County of its obligations thereunder and the transactions contemplated thereby, which has not been obtained or effected, save and except the authorization of the Texas Commission on Jail Standards relative to their continuing jurisdiction and authority to grant final approval for construction, occupancy and use of the facility.

This opinion is limited by, subject to and based upon the following:

- (a) The foregoing opinions are limited to in all respects to the laws of the State of Texas.
- (b) In connection with the opinions expressed herein as being made "to the best of our actual knowledge" such term is and shall be limited to our limited knowledge of the affairs of Newton County as their special counsel in this single transaction, and we have made no: (i) independent investigations as to the accuracy or completeness of any representations, warranties, data or other information, written or oral, made or furnished by the County to us; (ii) independent investigation or review of any judgments, decrees, franchises, certificates, permits, licenses, or the like; (iii) independent search of the records of any judicial authority other governing body or judgmental agency; or (iv) examination or investigation to verify the accuracy or completeness of any statistical or financial information furnished to any party or with respect to any other accounting or financial matters; or (v) examination or investigation of any agreements or instruments to which the County is a party other than those for which this firm was specifically retained by the County to provide legal services with respect to such agreements or instruments.
- (c) This opinion is limited to the matters stated herein and no opinion is inferred or may be applied beyond the matters expressly stated herein.
- (d) This opinion is subject to the qualifications that the binding effect of the documents and any document or instrument executed in connection with this transaction is limited by (i) applicable bankruptcy, insolvency, rearrangement, moratorium, reorganization, liquidation, conservation, or similar debtor relief laws and interpretations thereof, in effect from time to time,

affecting the rights of creditors generally and (ii) general principles of equity (regardless whether such remedies are sought in a proceeding at law or in equity).

- (e) The opinion expressed herein are subject to the exception that we express no opinion with the respect to the enforceability of any provision prohibiting oral amendments or oral waivers to the documents, or any other document or instrument executed in connection with the transaction, limiting the effect of a course of dealing between the parties thereto.
- (f) We are under no duty and accept no obligation to advise you of facts or changes in the law occurring after the date of this opinion which might alter or effect the matters set forth herein. This opinion is furnished to you solely in connection with the transactions being consummated by the referenced documents and may not be relied upon or described or quoted from by any other person, firm or entity, in each instance, without our prior written consent.

Notwithstanding anything to the contrary contained herein, our opinions are not intended to ratify, confirm or acknowledge the economic viability of the project's or detention facility's economic success or failure or the truthfulness or accuracy of any representations, applications, reports, documents, financial statements or other matters furnished by or on behalf of Newton County.

HALEY, DAVIS, WREN,  
BRISTOW & RASNER, P.C.

By:  
Herbert S. Bristow  
President

EXHIBIT "D" TO LEASE AGREEMENT

OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT

FOR A

THREE HUNDRED (300) BED DETENTION FACILITY

BY AND BETWEEN

THE COUNTY OF NEWTON, TEXAS

AND

TEXAS DETENTION MANAGEMENT, INC.

Dated as of June 15, 1990



OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT  
FOR A  
THREE HUNDRED (300) BED DETENTION FACILITY

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OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT  
FOR A  
THREE HUNDRED (300) BED DETENTION FACILITY

THIS OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT for a Three Hundred (300) Bed Detention Facility (the "Agreement") is made and entered into as of the 15th day of June, 1990, by and between the County of Newton, Texas (the "County"), a political subdivision of the State of Texas, and Texas Detention Management, Inc., a Texas corporation, d/b/a Newton County Detention Center ("TDM").

R E C I T A L S

WHEREAS, the County is a political subdivision of the State of Texas governed by a duly elected Commissioners Court;

WHEREAS, Subchapter F of Chapter 351 of the Texas Local Government Code grants authority for the County to enter into contracts with private vendors to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp or related facility;

WHEREAS, the County issued a Request for Proposals from private vendors by public notice on or about February 15, 1990;

WHEREAS, TDM has submitted a Proposal to the County offering to provide for the operation, maintenance and management of a three hundred (300) bed detention facility to be located in Newton County, Texas (the "Facility");

WHEREAS, the County and TDM desire to enter into this Agreement pursuant to which TDM shall provide for the operation, maintenance and management of the Facility; and

WHEREAS, the County and Diversified Municipal Services of Texas, Inc. ("DMS" or the "Lessor") have entered into that certain Lease Agreement dated as of June 15, 1990 by and between the County and DMS (the "Lease Agreement"), pursuant to which DMS has agreed to construct or cause to be constructed the Facility which is to be located in Newton County, Texas;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and subject to the conditions hereinafter set forth, the County and TDM hereby agree as follows:

ARTICLE I

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 1.01. Representations, Covenants and Warranties of the County.

The County represents, covenants and warrants as follows:

(a) The County is a duly formed and validly existing political subdivision of the State of Texas, and is governed by laws of the State of Texas.

(b) The laws of the State of Texas authorize the County to establish, acquire, construct, operate and maintain the Facility; to enter into this Agreement and the transactions contemplated hereby; and to carry out its obligations under this Agreement.

(c) The officers of the County executing this Agreement have been duly authorized to execute and deliver this Agreement under the terms and provisions of a resolution of the County's governing body or by other appropriate official action.

(d) The County has complied with all open meeting laws, all public contracting laws and all other state and federal laws applicable to this Agreement.

(e) Except as provided in Section 4.09, the County will not amend or modify the terms of this Agreement or enter into a new management contract with TDM or any other entity without first having received the opinion of independent counsel that (i) the proposed amendment or modification of this Agreement or entering into the new management contract will not cause the Lease Agreement or the Certificates of Participation in the rental payments due under the Lease Agreement to constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"); and (ii) the terms of this Agreement as so amended or modified or of such new management contract will comply with the conditions set forth in Revenue Procedure 82-14, 1982-1 C.B. 459, as modified by Conference Report No. 99-841, 1986-3 C.B. 698 (Vol. 4), as each may be modified or superseded. The independent counsel's opinion shall be provided to the Trustee (as defined in section 4.01 hereof), the County and DMS.

(f) The Facility is required by the County to house inmates detained or incarcerated by the County or the State of Texas or political subdivisions thereof; the County further represents and warrants that it will not detain or incarcerate or accept for incarceration in the Facility any prisoners other than those

detained or incarcerated by the County or the State of Texas or political subdivisions thereof and federal prisoners who are awaiting transfer to other facilities or other disposition under applicable federal law and such other prisoners, if any, to the extent permitted by state law as defined in and supported by an opinion of qualified counsel requested and received by the County. Prior to accepting federal prisoners or any other prisoners from sources outside of the State of Texas, the County will accept prisoners, if any, submitted for detention by Texas agencies and authorities on reasonable terms and costs to be negotiated between the County and such Texas agencies or authorities.

(g) The County shall diligently process and enter into all lawful and necessary agreements with such prisoner transfer sources as may be necessary to facilitate the receipt and incarceration of eligible nonhigh-risk prisoners in the Facility.

(h) No member of the governing body of the County is now or will be an employee or officer or director of TDM.

**SECTION 1.02. Representations, Covenants and Warranties of TDM.**

TDM represents, covenants and warrants as follows:

(a) TDM is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas; is duly qualified to transact business and hold property in the State of Texas and in every jurisdiction in which the nature of its activities requires it to be so qualified; has full and complete power to enter into this Agreement and to enter into and carry out the transactions contemplated hereby, and to carry out its obligations under this Agreement; and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof nor the consummation of the transactions contemplated hereby conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which TDM is now a party or by which TDM or its property is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of TDM.

(c) No officer or member of the Board of Directors of TDM is now or will be an employee or member of the governing body of the County.

(d) Except as provided in Section 4.09, if TDM desires to amend or modify the terms of this Agreement or if, upon the expiration of this Agreement, TDM desires to enter into a new management contract with the County, the terms of this Agreement as modified or amended or of such new management contract will

comply with the conditions set forth in Revenue Procedure 82-14, 1982-1 C.B. 459, as modified by Conference Report No. 99-841, 1986-3 C.B. 698 (Vol. 4), as each may be modified or superseded.

(e) The funds necessary to fully operate the facility for three months as identified in the financial statement and written verification of funds on deposit to be furnished by TDM pursuant to Section 2.06 hereof shall be for the sole and exclusive purpose of facilitating TDM's performance of this Agreement. TDM shall not transfer, diminish, or otherwise impair such funds; but rather, TDM shall maintain and keep such funds available for the performance of this Agreement through the first three (3) months of TDM's operation of the Facility.

## ARTICLE II

### DUTIES OF TDM

#### SECTION 2.01. Management, Operation and Maintenance of Facility.

TDM shall manage, operate and maintain the Facility in compliance with minimum standards adopted by the Texas Commission on Jail Standards (the "Commission") and shall receive and retain a Certification of Compliance from the Commission. In connection with the management, operation and maintenance of the Facility, TDM shall provide and pay for:

(a) Intake facilities and prisoner accounting which shall encompass prisoner intake, recordings, billing, systems of control, identification systems and records, and such other statistical records as may be required by law or are generally accepted prisoner-locator practices;

(b) Adequate staffing in compliance with applicable federal and state requirements necessary to maintain the requisite level of security maintained within the Facility and sufficient to monitor the activities of the prisoners confined within the Facility;

(c) Food and beverage services;

(d) Clothing and uniforms;

(e) Procurement and purchasing;

(f) Bookkeeping and financial accounting;

(g) Basic medical care as set forth in greater detail in Article IV;

(h) Training of all personnel to be employed at the Facility;

(i) Recreational activities;

(j) All ordinary repair, upkeep and maintenance required for the Facility; and

(k) All other ordinary operating expenses, except ad valorem taxes and hazard insurance on the Facility.

#### SECTION 2.02. Independent Contractor.

TDM is and shall be an independent contractor, and subject to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties and obligations under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer - employee or principal - agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities, and obligations of TDM or any other party. TDM shall be solely responsible for (and the County shall not have obligation with respect to) the interviewing, hiring, training, assignment, control, management, compensation, promotion, or termination of TDM's employees which constitute the Facility's administration and staff. However, such activities of TDM shall be subject to regular, on-site monitoring by the Newton County Sheriff (the "Sheriff") and TDM shall furnish reports on such matters to the Sheriff when so requested.

#### SECTION 2.03. Acceptance of Prisoners.

Except as provided in Section 4.09 and subject to the provisions of Sections 3.03 and 3.04, TDM shall accept and properly incarcerate all nonhigh-risk prisoners assigned by the County to the Facility for whom there is space available at the Facility within the statutory and regulatory limits of the Facility. High-risk prisoners are defined in this Agreement to mean and be the same as high-risk inmates as defined by the Commission. The Commission defines "high-risk" inmates as those persons who cannot be allowed to mingle physically with other inmates without direct supervision, normally because of assaultive and aggressive behavior or high escape risk.



SECTION 2.04. Certification of Facility.

TDM shall obtain, and thereafter maintain, certification of compliance from the Commission as well as any other certification(s) necessary to incarcerate at the Facility nonhigh-risk prisoners of whatever source, whether local, state, federal, or, to the extent allowed by state laws, out-of-state.

SECTION 2.05. Subcontractors.

The County acknowledges and agrees that TDM may subcontract any portion of the operation, maintenance or management services to be performed hereunder, but shall not thereby be relieved of any of its obligations set forth herein. TDM shall bind each subcontractor to the terms hereof as far as applicable to such subcontractor's work, and shall require that each subcontractor perform its work in conformance with the terms and conditions of this Agreement. In the event TDM subcontracts as provided for in this paragraph, then any such subcontractor shall be subject to the provisions of insurance pursuant to Section 9.01 hereof and indemnification pursuant to Section 10.01 hereof.

SECTION 2.06. Verification of Financial Responsibility.

The County hereby agrees to furnish TDM with written notice of commencement of construction of the Facility and said written notice shall contain the scheduled date of completion of construction of the Facility. TDM covenants and agrees that six (6) months prior to the scheduled date of completion of construction of the Facility, TDM shall furnish suitable information to the County to demonstrate the financial capability and intent of TDM to perform the obligations it has assumed under this Agreement specifically including but not limited to a showing by bank deposits or other means acceptable to County in their sole discretion that TDM has within its custody and control sufficient unencumbered funds committed to pay in advance 3 months operations expenses of the Facility. The information to be furnished by TDM to the County shall consist of: (a) a current audited financial statement for TDM prepared and signed by a certified public accountant; and (b) written verification from appropriate financial institutions evidencing the amount of funds on deposit for the account of TDM.

## ARTICLE III

### DUTIES OF THE COUNTY

#### SECTION 3.01. Transfer of Prisoners.

The County hereby covenants and agrees to transfer to the Facility all nonhigh-risk prisoners under the jurisdiction of the County from those prisoner transfer sources set forth below in excess of the maximum certified incarceration limit of the existing Newton County Jail. The County further covenants and assures TDM that all incarceration agreements between the County and the below-listed prison transfer sources contain provisions allowing for such transfer of nonhigh-risk prisoners to the Facility. Possible prison transfer sources include, but are not limited to, the following:

- (a) The County Sheriff of Newton County;
- (b) The County Sheriff of any other Texas county pursuant to an interlocal cooperation contract with the County;
- (c) The Texas Department of Criminal Justice ("TDCJ") pursuant to an agreement between the County and the TDCJ;
- (d) Subject to the limitations set forth herein including, but not limited to, Section 1.01(f), any other state (including the District of Columbia) or political subdivision thereof which may lawfully assign prisoners to the County and from whom the County has contracted to accept prisoners; and
- (e) Subject to the limitations set forth herein including, but not limited to, Section 1.01(f), and the limitations set forth in the Lease Agreement, the United States Government or any department or agency thereof, pursuant to an agreement between such governmental entity and the County.

#### SECTION 3.02. Newton County Jail Prisoners.

The County and the Sheriff shall be solely responsible for the housing, care and control of prisoners incarcerated in the existing Newton County Jail.

#### SECTION 3.03. Designation and Transfer of Prisoners.

Prior to transfer of any prisoner to the Facility, the designation of such prisoner as a "nonhigh-risk prisoner" shall be as agreed by TDM and the Sheriff and such designation shall be made in accordance with the classification plan approved by the Commission for the Facility, as well as applicable state law,

rules and regulations and the procedures and standards promulgated by the Commission. Only those prisoners designated by agreement as being nonhigh-risk shall be transferred by the County to the Facility. The County and the Sheriff shall be solely responsible for all transportation, security, and other requirements of whatever nature related to the transfer of prisoners to and from the Facility.

**SECTION 3.04. Reclassification and Reassignment of Prisoners.**

If at any time TDM finds that the capacity of the Facility, the demonstrated behavior of any prisoner or group of prisoners, or the mix of prisoners incarcerated in the Facility requires or warrants reassignment or reclassification of any prisoners, TDM will notify the Sheriff and make a reasonable recommendation concerning reassignment and/or reclassification of said prisoner or prisoners. The County, through its designated representatives, shall assist and cooperate with TDM in the transfer of said prisoner or prisoners to the appropriate responsible party. This determination shall be made by TDM in accordance with applicable state law and the rules and procedures promulgated by the Commission.

**SECTION 3.05. Communication and Cooperation.**

The County and the Sheriff shall cooperate with TDM in all matters of law enforcement, security and communications. The County and the Sheriff shall assist TDM, at the request of TDM, in the training, at TDM's expense, of TDM's employees hired to operate the Facility. The Sheriff shall assist and cooperate with TDM for purposes of obtaining such licensing as may be required by state or federal law for the aforementioned TDM employees. The County and the Sheriff shall assist and cooperate with TDM in providing information needed by TDM in the screening of candidates for employment to the extent such information may be lawfully obtained or released under federal or state law. The County and the Sheriff will verify that all TDM employees undertaking jailor duties are certified as required by the Commission.

**SECTION 3.06. Maximum Utilization of Facility.**

The County and TDM agree it shall be to their mutual benefit and interest for the Facility to be fully utilized by maintaining the maximum prisoner population within statutory and regulatory limits. To achieve this end, and throughout the term of this Agreement, TDM agrees to use its best efforts, at no cost to the County, to engage in marketing activities for the Facility, to take all reasonable actions which may be necessary to identify and locate potential prisoner transfer sources, and with the approval of the County and the Sheriff, to negotiate contracts on

behalf of the County and/or the Sheriff for receipt of eligible prisoners. The County understands and agrees that the actions to be performed by TDM to seek maximum utilization of the Facility are not intended by TDM and should not be construed by the County as any type of warranty or guarantee by TDM that its best efforts will result in any specified level of utilization of the Facility or in any specified amount of prisoner population being incarcerated at the Facility.

SECTION 3.07. Prisoner Escape.

In the event a prisoner confined to the Facility escapes from the Facility, TDM will immediately notify appropriate public law enforcement officers, including the Sheriff. The public officers so notified will be solely responsible for the capture and return of the escaped prisoner.

ARTICLE IV

DISBURSEMENT OF FACILITY REVENUE  
AND TDM'S COMPENSATION

SECTION 4.01. Receipt and Payment of Facility Revenues.

For the purpose of this Agreement, the term "Facility Revenues" shall mean all receipts of the County, from any sources whatsoever, arising from operation of the Facility including, without limitation, payments received for the incarceration, detention or housing of prisoners, including any fees owed or paid by the County for the housing of County Prisoners, as defined in Section 4.02, in the Facility. Each calendar month the County shall transfer within three (3) Business Days after receipt (or after the due date in the case of fees to be paid for County Prisoners) the first \$106,000 of Facility Revenues received by the County in such month to the Trustee (as defined below) for deposit into a special account designated as the Newton County Detention Facility Revenue Account (the "Revenue Account") which shall be administered by NCNB Texas National Bank, a national banking association, as trustee (the "Trustee"), pursuant to that certain Trust Agreement Relating to a Detention Facility Acquisition Project dated as of June 15, 1990, by and among the County, DMS and the Trustee (the "Trust Agreement"). The County shall also transfer to the Trustee from Facility Revenues any other amounts due under the Lease when notified by the Trustee or DMS. The term "Facility Revenues" as used in this Agreement shall have the same meaning and be the same as the term "Project Revenues" contained in the Trust Agreement.

SECTION 4.02. Fee for County Prisoners.

For the purpose of this Agreement, the term "County Prisoner" shall mean all nonhigh-risk prisoners assigned and transferred to the Facility by the Sheriff other than those nonhigh-risk prisoners received and incarcerated by the County pursuant to Incarceration Agreements with the Prisoner Transfer Sources set forth in Section 3.01(b)-(e) hereof and any other Prisoner Transfer Sources not now specifically set forth in Section 3.01. For each County Prisoner transferred to the Facility by the Sheriff, the County shall be obligated to pay a "per diem rate" per County Prisoner for each prisoner day a County Prisoner is assigned to the Facility. On or before the tenth (10th) calendar day of each month, the County shall transfer to the Trustee for deposit into the Revenue Account, an aggregate amount consisting of the total per diem rate due for the total prisoner days of County Prisoners incarcerated in the Facility during the preceding month; provided, however, that the total amount of Facility Revenues transferred to the Trustee shall not exceed the amount to be transferred under Section 4.01 hereof, the Lease Agreement and the Trust Agreement. The per diem rate to be paid by the County for County Prisoners is to be an amount equal to the lowest per diem rate charged by the County to a Prisoner Transfer Source described in Section 3.01(b)-(e) hereof and any other Prisoner Transfer Sources not now specifically set forth in Section 3.01 for prisoners assigned to the Facility during the preceding month; but in no event shall the per diem rate the County is obligated to pay be less than \$35.00 per County Prisoner per prisoner day or any greater than \$50.00 per County Prisoner per prisoner day. The full per diem amount computed under this Section 4.02 shall be considered as Facility Revenues regardless of the amount of such per diem amount transferred to the Trustee.

SECTION 4.03. Payment of Management Fees.

(a) TDM shall be entitled to receive from the County the following amounts: (i) reimbursement of costs and expenses pursuant to Section 4.06 and Section 5.02 hereof; (ii) the Fixed Monthly Fee pursuant to Section 4.04; (iii) the Gross Revenue Fee pursuant to Section 4.05; and (iv) the additional fees, if any, provided pursuant to an amendment pursuant to Section 4.09.

(b) Each month TDM shall prepare and send an invoice to the County for the fees due TDM for the immediately preceding month and shall include in such invoice the amounts of Facility Revenues that the County shall be entitled to receive. The form of the invoice shall be substantially in the form attached hereto as Exhibit "A" or as otherwise mutually agreeable between the County and TDM. All amounts payable to TDM and all amounts to be

retained by the County shall be computed on a monthly basis. The Available Amount for a month shall equal Facility Revenues accrued for such month, less the amounts transferred by the County to the Trustee under the Lease Agreement during such month, plus the amounts returned by the Trustee to the County during such month. The payment of the fees to TDM and the amounts to be retained by the County (A) shall be made and retained, respectively, as Facility Revenues are collected and amounts returned from the Trustee are received, (B) shall be made and retained in the order in which they accrued, and (C) as to amounts accrued for each month, shall be made to TDM and retained by the County in the following order of priority:

- (i) first, to TDM for reimbursable costs and expenses described in Section 4.06 and 5.02 for such month;
- (ii) second, to TDM for the Fixed Monthly Fee and the fixed portion of any fee payable to TDM pursuant to Section 4.09 for such month;
- (iii) third, by the County for the Fixed Amount for such month pursuant to Section 4.06;
- (iv) fourth, to TDM for the Gross Revenue Fee, if any, and the non-fixed portion of any fee payable to TDM pursuant to Section 4.09 for such month; and
- (v) fifth, by the County in an amount, if any, equal to the Available Amount for such month less the amounts described in (i), (ii), (iii) and (iv) above for such month.

Amounts payable to TDM shall be paid by the County within three (3) business days after the County collects any Facility Revenues (or after the due date in the case of fees to be paid for County Prisoners) or receives amounts transferred from the Trustee until all amounts due TDM are paid in full. The provisions of Section 4.08 shall apply to all such payments.

**SECTION 4.04. TDM Fixed Monthly Fee.**

During the term of this Agreement, the County shall pay TDM a fixed monthly fee of \$206,875.00 (the "Fixed Monthly Fee").

**SECTION 4.05. TDM Gross Revenue Fee.**

During the term of this Agreement and subject to the availability of Facility Revenues pursuant to Section 4.03 of this Agreement, the County shall pay to TDM, in addition to the Fixed Monthly Fee, for each month an additional fee (the "Gross Revenue

Fee") that shall equal ninety percent (90%) of the following (but not less than zero): the Available Amount for such month less the amounts described in Sections 4.03(b)(i) through (iii) for such month. Notwithstanding anything contained in this Agreement to the contrary, the maximum Gross Revenue Fee paid to TDM by the County for any month shall not exceed the Fixed Monthly Fee of \$206,875.00.

**SECTION 4.06. Calculation of County Fixed Amount.**

During the term of this Agreement and subject to the availability of Facility Revenues pursuant to Section 4.03 of this Agreement, the County shall receive and retain an aggregate amount each month (the "Fixed Amount") consisting of a Daily Amount to be paid for each prisoner (not including County Prisoners) for each prisoner day such prisoner was assigned to and incarcerated in the Facility during the preceding month. For purposes of this Section 4.06, the Daily Amount for each prisoner for each prisoner day shall be as follows:

(a) During the period from the commencement of operations at the Facility through December 31, 1991, the Daily Amount shall equal \$1.25;

(b) During the first full calendar year beginning on January 1, 1992, the Daily Amount shall equal \$2.62; and

(c) For all subsequent periods during the term of this Agreement, the Daily Amount shall equal \$2.62 per day;

provided, however, that if TDM has advanced funds for the purchase of hazard insurance on the Facility for the first year of its existence, then the County hereby agrees to reimburse TDM for this expense out of its Fixed Amount in twelve equal monthly installments.

**SECTION 4.07. Calculation of Prisoner Days.**

For the purposes of this Agreement, a "prisoner day" shall mean a twenty-four (24) hour time period beginning with twelve (12) o'clock midnight and ending twenty-four (24) hours later. A prisoner assigned to the Facility for any portion of a day shall be deemed to be included in that day's prisoner population for purposes of calculating the amounts payable pursuant to this Agreement.

**SECTION 4.08. Obligation of Specific Performance.**

In the event a dispute arises between the County and TDM regarding this Agreement or any of the provisions hereof, the

County and TDM shall be required to continue performance of their respective obligations during the pendency of any such dispute. The County shall continue to make all transfers to the Trustee, payments to TDM and any other actions required hereunder in a timely manner as set forth in this Agreement, the Lease Agreement and the Trust Agreement. Likewise, TDM shall continue to perform its obligations in accordance with the terms of this Agreement notwithstanding the existence of any dispute between the parties. Both the County and TDM shall have the right to compel specific performance by the other party of its respective contractual obligations and to institute any legal action necessary to compel such specific performance. The obligation of either party to perform its respective obligations hereunder may only be terminated as provided for in Article VIII of this Agreement or applicable law.

SECTION 4.09. Special Prisoner Reimbursements; Separate Agreements.

(a) The County and TDM each hereby agree and acknowledge that the fee structure contained in this Agreement was based upon the understanding that the Facility would not be used to house prisoners requiring special services or facilities. Notwithstanding the foregoing, in the event the County enters into an incarceration agreement with a Prisoner Transfer Source for the assignment to the Facility of prisoners with mental or physical handicaps or disabilities or prisoners needing special services or facilities, including but not limited to vocational training or drug or alcohol rehabilitation programs (such prisoners being referred to herein as "Special Prisoners"), with such mental or physical handicaps or disabilities or training or rehabilitation programs, services or facilities being expressly recognized in said incarceration agreement(s), this Agreement shall not be amended if the per diem amount charged to house such Special Prisoners in the Facility is less than or equal to \$60.00 per day per prisoner. If, however, because of the special services or facilities required for the housing of Special Prisoners the per diem amount with respect to such prisoners exceeds \$60.00 per day per prisoner, then this Agreement shall be amended to provide for the allocation between the County and TDM the excess of such per diem amount over \$60.00 per day. If an amendment is required to modify the fee structure provided in this Agreement pursuant to the foregoing, an opinion of special counsel shall not be required if the amendment does not affect the term of this Agreement, provides only for the provision of special services or facilities and the allocation of fees received with respect thereto, and after the amendment, at least 50% of TDM's compensation is to be paid on a periodic, fixed fee basis and no amount of TDM's compensation is based on a share of net profits. Notwithstanding anything contained herein to the contrary, the



County shall seek and obtain the prior approval of TDM before the County enters into an incarceration agreement with a Prisoner Transfer Source for assignment of any Special Prisoners to the Facility.

(b) To the extent specifically authorized by assignors of prisoners housed in the Facility, TDM may make separate and independent agreements with any agency or organization for the education or training of prisoners so long as such agency or organization has the legal right, capacity and authority to enter into a contract with TDM for the education or training of such prisoners. The reimbursement of costs or fees for these additional services shall be payable directly to TDM by the appropriate assignor of the prisoners being educated or trained. The County shall be provided by TDM, free of cost, copies of all such contracts or agreements. Said contracts shall be separate and independent of this Agreement and shall not constitute obligations of any type on behalf of the County; except insofar as the County is the responsible assignor of prisoners who are educated or trained pursuant to such contracts. Notwithstanding anything contained in the previous sentence to the contrary, TDM hereby agrees that all such separate contracts will comply with the conditions set forth in Revenue Procedure 82-14, 1982-1 C.B. 459, as modified by Conference Report No. 99-841, 1986-3 C.B. 698 (Vol. 4), as each may be modified or superseded.

SECTION 4.10. Annual Appropriation by County.

Notwithstanding anything contained in this Article IV to the contrary, the County's obligation to pay compensation to TDM pursuant to the provisions of this Article IV is subject to and conditioned upon the annual appropriation of funds, including Facility Revenues, by the County for such purpose.

ARTICLE V

MEDICAL CARE

SECTION 5.01. Basic Medical Care.

Basic medical care will be provided by TDM at TDM's expense to all prisoners detained at the Facility. This shall be limited to any condition which can be "self-treated" by the prisoners or which may be treated by a lay technician acting under guidelines provided by a medical doctor, including first aid for emergencies. This shall also include the dispensing of "over-the-counter" type medications which have been approved for inventory by the medical consultant to the Facility.

SECTION 5.02. Other Medical Care.

The cost of hospitalization, prescription drugs, surgical and dental care (and transportation to obtain such care) for a prisoner shall be the obligation of the jurisdiction from which the prisoner was assigned to the Facility.

ARTICLE VI

COMPLIANCE WITH STANDARDS

SECTION 6.01. Procedures Manual.

TDM shall prepare and adopt a procedures manual for the operation of the Facility so as to assure that the Facility is operated in compliance with applicable state law, and any other applicable law, and those rules and procedures promulgated by the Commission. TDM shall make such modifications and corrections in said procedures manual as are necessary to keep the Facility in compliance with state law, other applicable law, and the rules and procedures promulgated by the Commission.

SECTION 6.02. Training of Employees.

TDM, at its sole cost and expense with such assistance and cooperation as may be reasonably necessary of the County and the Sheriff as requested by TDM, shall ensure that all employees at the Facility are adequately trained to perform at the requisite levels and standards required by state law, other applicable law, and the rules and procedures promulgated by the Commission.

SECTION 6.03. Employee Healthcare Benefits

TDM shall, at a minimum, provide healthcare benefits for its employees that are comparable to those healthcare benefits provided by the County to the County's employees.

ARTICLE VII

TERM OF AGREEMENT

SECTION 7.01. Initial Term.

Subject to Section 12.14, this Agreement shall be effective from the date it is made and entered into by the parties hereto. The initial term of this Agreement shall be for a period of three (3) years, commencing from the date upon which the Facility is certified by the Commission to receive prisoners.

SECTION 7.02. Renewal Options.

Upon the expiration of the Agreement's initial term, the Agreement may be extended thereafter for two (2) one-year renewal option periods upon the mutual agreement of the County and TDM. Either party intending not to renew the Agreement beyond the initial term or beyond the first committed renewal option period shall provide written notice of such intent not to renew to the other party at least 180 days prior to the end of the applicable initial term or renewal option period. If neither party furnishes the other party with said notice of intent not to renew, then under the terms of this Agreement, the parties will be deemed to have agreed to extend the term of this Agreement by an additional one-year renewal option period. In any event, this Agreement shall terminate upon the expiration of the second one-year option renewal period.

ARTICLE VIII

TERMINATION

SECTION 8.01. Termination by County.

The County shall have the right to terminate this Agreement only in the event of TDM's failure to operate, maintain or manage the Facility in compliance with the terms of this Agreement and applicable state law and in accordance with the rules and procedures promulgated by the Commission. However, prior to the exercise of its right to terminate this Agreement, the County shall give TDM written notice setting forth in detail all matters of alleged noncompliance and TDM shall have a reasonable period of time after receipt of said notice, based upon the circumstances of the situation and in ordinary circumstances within 90 days, within which to correct all matters of noncompliance set forth in the required notice.

SECTION 8.02. Payment Upon Termination.

In the event this Agreement is terminated by the County or TDM, TDM shall be entitled to receive payment in accordance with the provisions of Article IV of this Agreement for the prisoners incarcerated in the Facility for the total number of prisoner days furnished at the Facility by TDM up to and including the date of termination.

SECTION 8.03. Bankruptcy of TDM.

In the event of the filing of a petition in bankruptcy, by or against TDM, and if instituted against TDM, if consented to or

acquiesced in by TDM, or if said petition in bankruptcy is not dismissed within sixty (60) days after the filing of same, the County shall have the right to terminate this Agreement upon the same terms and conditions set forth in Sections 8.01 and 8.02. If the County terminates this Agreement due to TDM's bankruptcy, then the County shall be entitled to immediately take over and assume the operation, maintenance and management of the Facility or immediately contract with a replacement contractor for such services for the Facility.

**SECTION 8.04. Termination for Nonpayment of Funds.**

The payment of money by the County under any provisions hereof is contingent upon the receipt of Facility Revenues for prisoners assigned to the Facility, including the availability of additional funds appropriated by the County (if any) to cover the provisions hereof. Neither the County, nor its elected officials, officers, employees, agents, attorneys, or other individuals acting on behalf of the County, make any representations or warranty as to whether any appropriation will, from time to time during the initial term or any extension hereof, be made by the County to cover the provisions hereof. Likewise, neither the County, nor its elected officials, officers, employees, agents, attorneys, or other individuals acting on behalf of the County, make any representations or warranty as to the sufficiency or amount of Facility Revenues (if any) the County may be able to receive from potential Prisoner Transfer Sources pursuant to incarceration agreements for prisoners to be assigned to the Facility. In the event funds for this agreement become unavailable due to nonappropriation or insufficiency of Facility Revenues, or in the event the County fails to make payment to TDM for whatever reason, so that TDM fails to receive, as a minimum monthly payment, its Fixed Monthly Fee for a period of ninety (90) consecutive days, then TDM shall have the right to terminate this Agreement and receive payment upon termination in accordance with the provisions of Section 8.02 of this Agreement payable from legally available funds.

**SECTION 8.05. Termination Due to Certain Changes in Circumstances.**

In the event that changes in laws, government regulations, court orders or the minimum standards of the Commission in effect as of the date of this Agreement cause an increase, on an annual basis, in the cost of operating, managing, and maintaining the Facility of an amount in excess of \$120,000.00 over the average annualized operating costs for the first three (3) month period during which occupancy of the Facility exceeds ninety percent (90%), then TDM shall have the right, upon ninety (90) days prior written notice to the County, to terminate this Agreement and

receive payment upon termination as set forth in Section 8.02 of this Agreement. TDM shall provide the County with such documentation of such increased costs as the County may reasonably request.

SECTION 8.06. Termination by Trustee.

The County and TDM hereby agree that upon an event of default by the County under the Lease Agreement resulting in the Trustee acquiring title to the Facility, the Trustee may terminate this Agreement by providing notice to the County and TDM in accordance with Section 12.12 hereof.

ARTICLE IX

INSURANCE

SECTION 9.01. Liability Insurance.

During the term of this Agreement, TDM shall obtain and maintain in force, at its sole cost, risk and expense, an adequate plan of insurance sufficient to protect TDM, the County and the Sheriff, its officers, guards, employees, subcontractors, and agents against all claims, including claims based on violations of civil rights, arising from the services to be performed by TDM under this Agreement and to protect the County and the Sheriff from actions by a third party against TDM, its officers, guards, employees, and agents as a result of this Agreement. At a minimum, TDM shall obtain and maintain in force a policy or policies of liability insurance in an aggregate amount of no less than \$1 million (\$1,000,000) in coverage for any single claim thereunder. Such insurance shall insure against all claims, including claims based upon violations of civil rights arising from services performed by TDM pursuant to this Agreement.

SECTION 9.02. Additional Insureds.

The policy or policies of insurance to be obtained and maintained by TDM under the provisions of Section 9.01 of this Agreement shall name the County and its employees, the County Judge of the County, the County Commissioners of the County, and the Sheriff as additional insureds.

SECTION 9.03. Proof of Insurance.

TDM shall provide to the County a certificate or certificates of insurance as proof of the implementation of an adequate plan of insurance to demonstrate the required insurance policies have been obtained and are being maintained in accordance with Section 9.01. If, through no fault of TDM, such insurance

policies are cancelled or endorsed in such a way as to limit the insurance coverage provided thereunder, TDM shall provide the County written notice thereof immediately, and TDM shall obtain, as soon as possible, and at its own cost, adequate replacement insurance policies that are commercially available.

## ARTICLE X

### INDEMNIFICATION

#### SECTION 10.01. Indemnification Obligations of TDM.

TDM agrees and does hereby assume any and all liability for all claims arising from the services performed by TDM or its subcontractors under this Agreement. TDM further agrees to and does hereby defend, hold harmless and indemnify the County, its officers, directors, employees, agents and representatives (including, but not limited to, the County Judge, the County Commissioners, and the Sheriff), from and against all claims, damages, losses, costs and expenses, including attorneys' fees incurred or suffered by the County, its officers, directors, employees, agents or representatives, arising out of or resulting from any negligent or wrongful act or failure to act by TDM or its subcontractors pursuant to the provisions of this Agreement, including all claims arising from the services performed under this Agreement by TDM.

## ARTICLE XI

### APPROVAL AND MONITORING BY COUNTY SHERIFF

#### SECTION 11.01. Approval of Sheriff.

The Sheriff has executed this Agreement in the space provided herein to evidence his written approval of this Agreement as required by Section 351.102 of the Texas Local Government Code.

#### SECTION 11.02. Approval of Conditions of Confinement.

Within two months of the scheduled date of completion of the Facility, TDM shall provide the County and the Sheriff with written comprehensive standards for conditions of confinement. The Sheriff shall review and approve the comprehensive standards for conditions of confinement to be developed and implemented by TDM for the operation, management and maintenance of the Facility. The acceptance and approval of said written standards are an express condition precedent to the County's obligations under

this Agreement. Said standards shall be incorporated as an addendum to this Agreement in compliance with Section 351.103 of the Local Government Code.

SECTION 11.03. Monitoring by Sheriff.

The Sheriff shall regularly monitor TDM's operation of the Facility. The Sheriff or his written designated representative shall conduct a thorough on-site inspection of the Facility no less than twice each month throughout the term of this Agreement.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01. Disadvantaged Businesses and Local Hiring Preferences.

TDM shall use its best efforts to identify and utilize disadvantaged businesses, as defined in Section 351.1035 of the Texas Local Government Code, as subcontractors that may provide or have the potential to provide supplies, materials, services, and equipment to TDM for performance of this Agreement. TDM shall use its best efforts to hire local personnel as employees for the Facility. Additionally, TDM shall use its best efforts to purchase local goods and services in connection with the operation, maintenance, and management of the Facility. TDM shall also encourage its subcontractors to similarly utilize disadvantaged businesses, hire local personnel and purchase goods and services locally.

SECTION 12.02. Nondiscrimination.

TDM shall at all times provide the services required hereunder in compliance with all laws with respect to nondiscrimination in hiring, promotion or pay of employees. No person will be subjected to discrimination on the grounds of race, color, religious or national origin.

SECTION 12.03. Binding Nature.

This Agreement shall not be binding upon the parties until it is approved and executed by both parties. This Agreement, after properly approved and executed by the parties, shall inure to the benefit of the County and TDM and shall be binding upon the County and TDM and their respective successors and assigns.

SECTION 12.04. Invalidity and Severability.

In the event that any provision of this Agreement shall be held invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby. The parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

SECTION 12.05. Terminology and Definitions.

All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

SECTION 12.06. Arbitration.

Upon the mutual agreement in writing, the parties may submit any matter in dispute between the parties to binding arbitration.

SECTION 12.07. Laws of Texas.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

SECTION 12.08. Jurisdiction.

This Agreement shall be deemed performable in Newton County, Texas. Any and all suits for any and every breach of this Agreement shall be instituted and maintained in any court of competent jurisdiction in Newton County, Texas.

SECTION 12.09. Entire Agreement.

This Agreement incorporates all of the agreements, covenants and understandings between the parties hereto, concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

SECTION 12.10. Amendment.

No changes to this Agreement shall be made except upon written agreement of both parties. Within five calendar days of any



modification or amendment of this Agreement, the County shall furnish the Trustee with a copy of such newly amended or modified Agreement.

SECTION 12.11. Confidentiality.

To the extent allowed by applicable state and federal laws, any confidential information provided to or developed by TDM in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by TDM or the County without prior written approval of the other party.

SECTION 12.12. Notices.

All notices called for or contemplated hereunder shall be in writing and shall be valid when actually received by the party to whom such notice is given if sent via a private courier or by means other than the United States mail, or when deposited in the United States Mail, postage pre-paid, and addressed to the party as herein specified below:

- (a) Notices to the County shall be delivered or sent as follows:

The Honorable Lee Roy Fillyaw  
County Judge  
P. O. Box J  
Newton, Texas 75966

- (b) Notices to TDM shall be delivered or sent as follows:

Texas Detention Management  
4120 Southwest Freeway, Suite 111  
Houston, Texas 77027

SECTION 12.13. Headings.

The headings used herein are for convenience of reference only and shall not constitute a part hereof or effect the construction or interpretation of this Agreement.

SECTION 12.14. Condition to Effectiveness.

The effectiveness of this Agreement is subject to the construction of the Facility and certification thereof by the Commission to receive prisoners.

SECTION 12.15. Execution Authority.

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

SECTION 12.16. Execution in Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

NEWTON COUNTY, TEXAS

TEXAS DETENTION MANAGEMENT, INC.

By: \_\_\_\_\_  
Lee Roy Fillyaw,  
County Judge

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Wayne Powell,  
County Sheriff

By: \_\_\_\_\_  
Melba Canty,  
County Clerk

(COUNTY SEAL)

182:D891110H.00  
071790tddl  
H0418 52250 NEWT

Exhibit "A"

Invoice for Services Rendered  
by Texas Detention Management, Inc.  
at the Newton County Detention Facility

Date: \_\_\_\_\_  
For the Month of \_\_\_\_\_, 19\_\_\_\_

Sources of Income

Facility Revenues

[Detail] \$ \_\_\_\_\_  
Less: Amount transferred by County to  
NCNB Texas National Bank, Trustee  
under the Lease Agreement \_\_\_\_\_  
Add: Return of amounts from Trustee \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

TDM Fees and County Retainage

(To be paid from available cash in the  
following priority)

1. Reimbursable costs and expenses payable to  
TDM (Sections 4.06 and 5.02)\* \$ \_\_\_\_\_
  2. Fixed Monthly Fee payable to TDM (Section 4.04)\* 206,875.00
  3. Fixed portion of any fee payable to TDM  
pursuant to Section 4.09\* \_\_\_\_\_
  4. Fixed Amount payable to County (Section 4.06)\* \_\_\_\_\_
  5. Gross Revenue Fee payable to TDM, if any  
(Section 4.05) \_\_\_\_\_
  6. Non-fixed portion of any fee to TDM  
payable pursuant to Section 4.09, if any \_\_\_\_\_
  7. Balance payable to County, if any \_\_\_\_\_
- TOTAL (Not to be less than total above)\* \$ \_\_\_\_\_

(Section References are to the Operation, Maintenance and Manage-  
ment Agreement)

\* Items 1-4 are fixed fees and are payable from future sources  
of income if the current month's sources of income are  
insufficient.

EXHIBIT "E"  
 NEWTON COUNTY  
 RENTAL PAYMENT SCHEDULE

RENTAL PAYMENT DATES*** FROM:	TO:	TOTAL CUMULATIVE SEMI-ANNUAL RENTAL PAYMENT AMOUNT*	INTEREST PORTION**	PRINCIPAL PORTION	CONCLUDING PAYMENT
15-Jun-90	15-Nov-90	482,812.50	482,812.50	0.00	10,815,000.00
15-Dec-90	15-May-91	482,812.50	482,812.50	0.00	10,815,000.00
15-Jun-91	15-Nov-91	582,812.50	482,812.50	100,000.00	10,710,000.00
15-Dec-91	15-May-92	578,125.00	478,125.00	100,000.00	10,605,000.00
15-Jun-92	15-Nov-92	573,437.50	473,437.50	100,000.00	10,500,000.00
15-Dec-92	15-May-93	568,750.00	468,750.00	100,000.00	10,395,000.00
15-Jun-93	15-Nov-93	564,062.50	464,062.50	100,000.00	10,290,000.00
15-Dec-93	15-May-94	559,375.00	459,375.00	100,000.00	10,185,000.00
15-Jun-94	15-Nov-94	554,687.50	454,687.50	100,000.00	10,080,000.00
15-Dec-94	15-May-95	550,000.00	450,000.00	100,000.00	9,975,000.00
15-Jun-95	15-Nov-95	545,312.50	445,312.50	100,000.00	9,870,000.00
15-Dec-95	15-May-96	540,625.00	440,625.00	100,000.00	9,765,000.00
15-Jun-96	15-Nov-96	535,937.50	435,937.50	100,000.00	9,660,000.00
15-Dec-96	15-May-97	631,250.00	431,250.00	200,000.00	9,555,000.00
15-Jun-97	15-Nov-97	621,875.00	421,875.00	200,000.00	9,440,000.00
15-Dec-97	15-May-98	612,500.00	412,500.00	200,000.00	9,325,000.00
15-Jun-98	15-Nov-98	603,125.00	403,125.00	200,000.00	9,210,000.00
15-Dec-98	15-May-99	593,750.00	393,750.00	200,000.00	9,095,000.00
15-Jun-99	15-Nov-99	584,375.00	384,375.00	200,000.00	8,980,000.00
15-Dec-99	15-May-2000	575,000.00	375,000.00	200,000.00	8,865,000.00
15-Jun-2000	15-Nov-2000	565,625.00	365,625.00	200,000.00	8,750,000.00
15-Dec-2000	15-May-2001	556,250.00	356,250.00	200,000.00	8,635,000.00
15-Jun-2001	15-Nov-2001	546,875.00	346,875.00	200,000.00	8,520,000.00
15-Dec-2001	15-May-2002	537,500.00	337,500.00	200,000.00	8,405,000.00
15-Jun-2002	15-Nov-2002	628,125.00	328,125.00	300,000.00	8,290,000.00
15-Dec-2002	15-May-2003	614,062.50	314,062.50	300,000.00	8,175,000.00
15-Jun-2003	15-Nov-2003	600,000.00	300,000.00	300,000.00	8,060,000.00
15-Dec-2003	15-May-2004	585,937.50	285,937.50	300,000.00	7,945,000.00
15-Jun-2004	15-Nov-2004	571,875.00	271,875.00	300,000.00	7,830,000.00
15-Dec-2004	15-May-2005	557,812.50	257,812.50	300,000.00	7,715,000.00
15-Jun-2005	15-Nov-2005	543,750.00	243,750.00	300,000.00	7,600,000.00
15-Dec-2005	15-May-2006	529,687.50	229,687.50	300,000.00	7,485,000.00
15-Jun-2006	15-Nov-2006	615,625.00	215,625.00	400,000.00	7,370,000.00
15-Dec-2006	15-May-2007	596,875.00	196,875.00	400,000.00	7,255,000.00
15-Jun-2007	15-Nov-2007	578,125.00	178,125.00	400,000.00	7,140,000.00
15-Dec-2007	15-May-2008	559,375.00	159,375.00	400,000.00	7,025,000.00
15-Jun-2008	15-Nov-2008	540,625.00	140,625.00	400,000.00	6,910,000.00
15-Dec-2008	15-May-2009	621,875.00	121,875.00	500,000.00	6,795,000.00
15-Jun-2009	15-Nov-2009	598,437.50	98,437.50	500,000.00	6,680,000.00
15-Dec-2009	15-May-2010	575,000.00	75,000.00	500,000.00	6,565,000.00
15-Jun-2010	15-Nov-2010	551,562.50	51,562.50	500,000.00	6,450,000.00
15-Dec-2010	15-May-2011	628,125.00	28,125.00	600,000.00	6,335,000.00
TOTALS:		\$24,043,750.00	\$13,743,750.00	\$10,300,000.00	

\* Each Rental Payment is equal to one sixth (1/6th) of the succeeding or coincident Total Cumulative Semi-Annual Rental Payment Amount and shall be due from and payable by the Lessee on the fifteenth (15th) day of each month throughout the Term of this Lease. Lessee shall be entitled to a credit against such Rental Payments at the times and in the amounts set forth in, and accordance with, the Trust Agreement.

- \*\* (a) Accrued interest on the sale of Certificates will be deposited with the Trustee and will be applied toward the Interest Portion due on December 15, 1990.  
 (b) The aggregate amount of \$ 965,625.00 of interest due and payable on or prior to June 15, 1991 will be paid in whole or in part from capitalized interest in the amount of \$ 835,105.38 deposited with the Trustee on the Closing Date, together with the investment income derived from the Trust Fund as provided in the Trust Agreement. Such payments shall be in lieu of the Rental Payments due and payable by the Lessee during such period pursuant to Section 6.1 of the Lease.

\*\*\* Certificate Payment Dates under the Trust Agreement are December 15th and June 15th of each year, beginning December 15, 1990.

EXHIBIT "F" TO LEASE AGREEMENT

(FORM OF)

NEWTON COUNTY, TEXAS  
ASSIGNMENT AND AGENCY AGREEMENT

This NEWTON COUNTY, TEXAS ASSIGNMENT AND AGENCY AGREEMENT (the "Assignment and Agency Agreement") made as of June 15, 1990, is by and between the COUNTY OF NEWTON, TEXAS, a political subdivision of the State of Texas ("Lessee"), and NCNB TEXAS NATIONAL BANK, a national banking association with a corporate trust office in Houston, Texas ("Trustee").

RECITALS:

a. Lessee and Diversified Municipal Services of Texas, Inc. ("Lessor") have entered into a Lease Agreement dated as of June 15, 1990 (the "Lease"), relating to the lease and acquisition of the Land and the Improvements to be designed, acquired, constructed and installed thereon (together, the "Project") more particularly described in the Lease.

b. Lessor has assigned its right, title and interest in the Lease and the payments to be made thereunder to Trustee for and on behalf of the owners of the certificates of participation (the "Owners of the Certificates") delivered pursuant to a Trust Agreement Relating to a Detention Facility Acquisition Project dated as of June 15, 1990 (the "Trust Agreement"), by and among Lessor, Lessee and Trustee.

c. The terms defined in the Lease and the Trust Agreement and capitalized herein shall for the purposes of this Assignment and Agency Agreement, have the meanings given them in the Lease and Trust Agreement, respectively, unless the context requires otherwise.

d. In accordance with the Lease, Lessee, as agent for Lessor as provided for in Section 3.1 of the Lease, has entered into a design contract (the "Acquisition Contract") dated June 15, 1990 with the Design Firm for the design of the Project. A copy of this Acquisition Contract is attached hereto as Exhibit "1."

e. Each of the parties hereto has authority to enter into this Assignment and Agency Agreement and has taken all actions necessary to authorize its officers to execute this Assignment and Agency Agreement.

I. ASSIGNMENT

For and in consideration of value received, the receipt and sufficiency of which is hereby acknowledged, Lessee does hereby

assign and transfer to Trustee, for the benefit of the Owners of the Certificates, its rights and interest, but not its duties, obligations or responsibilities, under the Acquisition Contract attached hereto as Exhibit "1" including, but not limited to, the right to exercise such rights and remedies conferred on Lessee under said Acquisition Contract as may be necessary to protect the interests of the Owners of the Certificates in the event such rights and remedies are not exercised by Lessee. This assignment does not include an assignment of title to the Improvements and is made for purposes of securing Lessee's obligations under the Lease and the Trust Agreement.

## II. APPOINTMENT OF AGENT

Trustee irrevocably appoints Lessee agent of Trustee in connection with the design of the Improvements pursuant to Section 3.1 of the Lease.

## III. ACCEPTANCE

a. Subject to the provisions of the Trust Agreement, Trustee hereby accepts such assignment for the exclusive purposes of securing such payments and rights for the benefit of the Owners of the Certificates.

b. Lessee hereby accepts appointment as agent for Trustee in connection with the design of the Improvements pursuant to the Acquisition Contract.

## IV. MISCELLANEOUS

a. This Assignment and Agency Agreement shall not confer any rights or impose any duties upon Trustee in addition to those expressly provided in the Trust Agreement.

b. This Assignment and Agency Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Assignment and Agency Agreement shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

c. This Assignment and Agency Agreement shall be construed and governed in accordance with the laws of the State of Texas (exclusive of conflicts of law principles) and will, to the maximum extent practicable, be deemed to call for performance in Harris County, Texas. Courts within the State shall have jurisdiction over any and all disputes between the parties hereto, whether in law or in equity. The parties hereby consent to and agree to submit to the jurisdiction of such courts. Venue in any

dispute whether in federal or state court shall, to the maximum extent practical, be laid in Harris County, Texas.

d. Any provision of this Assignment and Agency Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition and shall not invalidate the remainder of this Assignment and Agency Agreement. Instead, the entire Assignment and Agency Agreement will be construed as if not containing the particular invalid, unenforceable or prohibited provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Assignment and Agency Agreement is determined to be invalid, unenforceable or prohibited, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

e. Headings preceding the text of the paragraphs hereof are solely for convenience of references and shall not constitute a part of this Assignment and Agency Agreement or affect its meaning, construction or effect.



IN WITNESS WHEREOF, Lessee and Trustee have caused this Assignment and Agency Agreement to be duly executed as of the year and day first written above.

NEWTON COUNTY, TEXAS

NCNB TEXAS NATIONAL BANK

BY: \_\_\_\_\_  
Lee Roy Fillyaw,  
Newton County Judge

BY: \_\_\_\_\_  
J. Douglas McDade,  
Vice President & Trust Officer

ATTEST:

Accepted and approved this \_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_

BY: \_\_\_\_\_

DIVERSIFIED MUNICIPAL SERVICES  
OF TEXAS, INC.

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
H. Joseph Vaughn,  
President

Exhibit "1"

[Form of Acquisition Contract Omitted]

EXHIBIT "G" TO LEASE AGREEMENT

(FORM OF)

ACCEPTANCE CERTIFICATE

NEWTON COUNTY, TEXAS, as lessee ("Lessee"), under that certain LEASE AGREEMENT dated as of June 15, 1990 (the "Lease"), with DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC., as lessor ("Lessor"), hereby acknowledges receipt in good condition of all of the property and improvements described on Attachment "A" hereto and hereby accepts such property and improvements. Lessee hereby certifies that Lessor has fully and satisfactorily performed all covenants and conditions to be performed by it under the Lease with regard to such property and improvements, that such property and improvements are fully insured in accordance with Article VII of the Lease, and that such property and improvements constitute all or a portion of the Improvements as that term is defined in the Lease.

DATE: \_\_\_\_\_, 199\_\_.

NEWTON COUNTY, TEXAS

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

(SEAL)

EXHIBIT "H" TO LEASE AGREEMENT

LIST OF ADDITIONAL PERMITTED ENCUMBRANCES

All exceptions listed on Schedule B and C of Title Commitment No. C-5804, G.F. No. 5768, dated effective July 5, 1990 relating to the Land and issued by Stewart Title Guaranty Company.

EXHIBIT "I" TO LEASE AGREEMENT  
(FORM OF)

DMS ACQUISITION CONTRACT ASSIGNMENT AND AGENCY AGREEMENT

This DMS ACQUISITION CONTRACT ASSIGNMENT AND AGENCY AGREEMENT (the "DMS Acquisition Contract Assignment Agreement") is made and entered into as of June 15, 1990, by and between DIVERSIFIED MUNICIPAL SERVICES OF TEXAS, INC., a corporation duly organized and existing under the laws of the State of Texas ("DMS"), and NCNB TEXAS NATIONAL BANK, a national banking association, as trustee (the "Trustee") pursuant to a Trust Agreement Relating to a Detention Facility Acquisition Project dated as of June 15, 1990 (the "Trust Agreement"), by and among DMS, the Trustee and the County of Newton, Texas (the "County").

W I T N E S S E T H:

In the joint and mutual exercise of their powers, in consideration of the mutual covenants herein contained and for other valuable consideration, the parties hereto recite and agree as follows:

Section 1. Recitals.

(a) DMS and the County have entered into a Lease Agreement dated June 15, 1990 (the "Lease") whereby DMS has agreed to lease to the County and the County has agreed to lease and acquire from DMS the Land and the Improvements to be designed, acquired, constructed and installed thereon (collectively, the "Project") as more particularly defined in the Lease in the manner and on the terms and conditions set forth in the Lease.

(b) DMS has assigned its right, title and interest in the Lease and the payments to be made thereunder to the Trustee for and on behalf of the owners of the certificates of participation ("Owners of the Certificates") delivered pursuant to the Trust Agreement.

(c) The terms capitalized in this DMS Acquisition Contract Assignment Agreement but not defined herein shall have the meanings given to them in the Lease and the Trust Agreement unless the context requires otherwise.

(d) In accordance with the Lease, DMS has entered into a Construction Contract (the "Acquisition Contract") dated June 15, 1990 with Hale-Mills Construction, Inc. for the construction of the detention facility in connection with the Project. A copy of this Acquisition Contract is attached hereto as Exhibit "1".

(e) Each of the parties has authority to enter into this DMS Acquisition Contract Assignment Agreement and has taken all actions necessary to authorize its officers to enter into it.

Section 2. Assignment. For the consideration recited hereinabove, the sufficiency of which is hereby acknowledged, DMS does hereby assign and transfer to the Trustee, for the benefit of the Owners of the Certificates its rights and interest, but none of its responsibilities, under the Acquisition Contract attached hereto as Exhibit "1" including, but not limited to, the right to exercise such rights and remedies conferred on DMS under said Acquisition Contract as may be necessary to protect the interests of the Owners of the Certificates. This Assignment does not include an assignment of title to the Improvements and is made for the purposes of securing the Lessor's obligations under the Lease and the Trust Agreement.

Section 3. Acceptance.

(a) Subject to the provisions of the Trust Agreement, the Trustee hereby accepts the assignment provided for herein and hereby appoints DMS as agent for the Trustee in connection with the acquisition, construction or installation of the Improvements pursuant to the Acquisition Contract.

(b) DMS hereby accepts appointment as agent for the Trustee in connection with the acquisition, construction or installation of the Improvements pursuant to the Acquisition Contract.

Section 4. Miscellaneous.

(a) This DMS Acquisition Contract Assignment Agreement shall not confer any rights or impose any duties upon the Trustee in addition to those expressly provided in the Trust Agreement.

(b) Headings preceding the text of the Sections hereof are solely for convenience of references and shall not constitute a part of this DMS Acquisition Contract Assignment Agreement or affect its meaning, construction or effect.

(c) This DMS Acquisition Contract Assignment Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This DMS Acquisition Contract Assignment Agreement shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

(d) This DMS Acquisition Contract Assignment Agreement shall be construed and governed in accordance with the laws of the State of Texas (exclusive of conflicts of law principles) and

will, to the maximum extent practicable, be deemed to call for performance in Harris County, Texas. Courts within the state shall have jurisdiction over any and all disputes between the parties hereto, whether in law or equity. The parties hereby consent to and agree to submit to the jurisdiction of such courts. Venue in any dispute whether in federal or state court shall be laid in Harris County, Texas.

(e) Any provision of this DMS Acquisition Contract Assignment Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition and shall not invalidate the remainder of this DMS Acquisition Contract Assignment Agreement. Instead, the entire DMS Acquisition Contract Assignment Agreement will be construed as if not containing the particular invalid, unenforceable or prohibited provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this DMS Acquisition Contract Assignment Agreement is determined to be invalid, unenforceable or prohibited, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

IN WITNESS WHEREOF, the parties have executed this DMS Acquisition Contract Assignment Agreement as of the day and the year first written above.

DIVERSIFIED MUNICIPAL  
SERVICES OF TEXAS, INC.

NCNB TEXAS NATIONAL BANK,  
as Trustee

By: \_\_\_\_\_  
H. Joseph Vaughn,  
President

By: \_\_\_\_\_  
J. Douglas McDade,  
Vice President  
and Trust Officer

Accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 1990.

COUNTY OF NEWTON, TEXAS

By: \_\_\_\_\_  
Lee Roy Fillyaw,  
Newton County Judge

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_,  
1990 by H. Joseph Vaughn, President of Diversified Municipal Ser-  
vices of Texas, Inc., a Texas corporation, on behalf of said  
corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Name Typed or Printed  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_,  
1990 by J. Douglas McDade, Vice President of NCNB Texas National  
Bank, a national banking association, on behalf of said  
corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

(SEAL)

\_\_\_\_\_  
Notary Name Typed or Printed  
My Commission Expires: \_\_\_\_\_



STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_,  
1990 by Lee Roy Fillyaw, County Judge of Newton County, Texas, on  
behalf of said county.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

(SEAL)

\_\_\_\_\_  
Notary Name Typed or Printed  
My Commission Expires:\_\_\_\_\_

Exhibit "1"

[Form of Acquisition Contract Omitted]

192:D900330AA.00

EXHIBIT "J"  
to  
Lease Agreement

(Form of Opinion of Special Counsel to Lessor)

July 19, 1990

NCNB Texas National Bank  
Corporate Trust Department  
P.O. Box 2518  
Houston, Texas 77252-2518  
Attn: J. Douglas McDade

Re: Diversified Municipal Services of Texas, Inc.

Diversified Municipal Services of Texas, Inc. ("Company"), a Texas corporation, has requested that we, as special counsel for the Company, render our opinion with regard to certain matters in connection with the transaction ("Transaction") contemplated by the following Documents (together, "Documents"):

1. Construction Contract, dated as of June 15, 1990, by and among the Company and Hale-Mills Construction, Inc. ("Contractor"); and
2. DMS Acquisition Contract Assignment and Agency Agreement, dated as of June 15, 1990, by and among the Company and NCNB Texas National Bank ("Trustee").

In furnishing our opinion, we have examined original counterparts or photostatic or certified copies of such corporate records, documents, instruments and certificates of the Company provided to us by the Company, as we or the Company have deemed necessary, relevant or appropriate to enable us to render the opinions expressed herein. In making such examination, and except as to the Documents executed and delivered by the Company in connection with the Transaction, we have assumed the genuineness of all signatures on original Documents and the capacity of the individual signatories thereto and the authenticity of all Documents submitted to us as originals, the conformity to original Documents of all Documents submitted to us as photostatic or certified copies and the authenticity of the originals of such copies. As to matters of fact, we have relied entirely on the accuracy and completeness of written and oral statements and certifications of officers and representatives of the Company. This opinion is limited to the matters stated herein, and no opinion is to be implied or may be inferred beyond the matters expressly stated herein.

In accordance with the general policies of this law firm in rendering legal opinions, we have assumed, for the purpose of the opinions expressed below, that no fraud exists with respect to any of the matters relevant to these opinions. Based on the foregoing, and subject to the qualifications and exceptions hereinafter set forth, we are of the opinion that:

1. The Company is a corporation duly organized and validly existing under and by virtue of the laws of the State of Texas and has the full corporate power and authority to execute and deliver the Documents and to own and operate its properties and to conduct its business as contemplated by such Documents.
2. The Documents have been duly authorized, executed and delivered on behalf of the Company and, assuming due execution and delivery by all parties thereto, the Documents are legal, valid and binding obligations of the Company enforceable in accordance with their respective terms.
3. To the best of our actual knowledge, the Company is not in violation of, and the execution and delivery of the Documents and compliance with the provisions thereof by the Company do not conflict with or will not result in violation of, a breach of, or a default under the Articles of Incorporation or Bylaws of the Company, or to the best of our actual knowledge, any mortgage, lease, agreement, license, permit, judgment, decree, governmental order, statute, rule or regulation by which the Company is bound or to which any of its assets is subject or to which the Company is a party or by which it is bound.
4. To the best of our actual knowledge, there is no action, suit, litigation, inquiry or investigation before or by any court, governmental agency, public board or body pending, or, to the best of our actual knowledge, threatened, against the Company in any material respect affecting the existence of the Company or the titles of the Company's officers to their respective offices or seeking to prohibit, restrain or enjoin the execution or delivery of the Documents or affecting the Company, challenging the validity or enforceability of, or in which an unfavorable decision, ruling or finding would materially adversely affect, the Transaction contemplated by the Documents or the performance by the Company of any of its obligations thereunder.

This opinion is limited by, subject to and based upon the following:

- (a) The foregoing opinions are limited in all respects to the laws of the State of Texas and applicable federal law.

(b) In connection with the opinions expressed herein as being made "to the best of our actual knowledge," such term is and shall be limited to due inquiry of the officers and to representatives of the Company with respect to the matters addressed in Sections 1 through 4 above, both inclusive, and our limited knowledge of the affairs of such Company as their special counsel in this one Transaction, and we have made no (i) independent investigations as to the accuracy or completeness of any representations, warranties, data or other information, written or oral, made or furnished by the Company to us; (ii) independent investigation or review of any judgments, decrees, franchises, certificates, permits or the like; (iii) independent search of the records of any judicial authority or governmental agency; or (iv) examination or investigation to verify the accuracy or completeness of any financial, accounting, engineering or statistical information furnished to the Trustee or with respect to any other accounting or financial matters; or (v) examination or investigation of any agreements or instruments to which the Company is a party, other than those for which this firm was retained by the Company to provide legal services with respect to such agreements or instruments.

(c) This opinion is limited to the matters stated herein and no opinion is inferred or may be implied beyond the matters expressly stated.

(d) This opinion is subject to the qualification that the binding effect of the Documents and any other document or instrument executed in connection with the Transaction is limited by (i) applicable bankruptcy, insolvency, rearrangement, moratorium, reorganization, liquidation, conservation, or similar debtor relief laws and interpretations thereof, in effect from time to time, affecting the rights of creditors generally and (ii) general principals of equity (regardless of whether such remedies are sought in a proceeding at law or in equity).

We are members of the State Bar of Texas. The opinions expressed hereunder are based upon and limited to the laws of the State of Texas and the relevant laws of the United States of America.

The opinions expressed herein are subject to the exception that we express no opinion with respect to the enforceability of any provision prohibiting oral amendments or oral waivers to the Documents, or any other document or instrument executed in connection with the Transaction, limiting the effect of a course of dealing between the parties thereto. Further, we are under and accept no obligation to advise you of facts or changes in the law occurring after the date of this opinion which might alter or affect the matters set forth herein.

NCNB Texas National Bank  
July 19, 1990  
Page 4

This opinion is being delivered to the Trustee, Winstead Sechrest & Minick, Prager, McCarthy & Lewis, and Stoel Ravis Boley Jones & Grey, for the sole use and benefit of the Trustee, Winstead Sechrest & Minick, Prager, McCarthy & Lewis, and Stoel Ravis Boley Jones & Grey, in connection with the Transaction contemplated by the Documents and may not be relied upon in any manner by any other person. It is not to be quoted or used, in whole or in part, for any other purpose or delivered to any other person without the prior written consent of this firm.

Respectfully submitted,

HOLMES MILLARD & DUNCAN,  
a Professional Corporation

By: \_\_\_\_\_  
Eugene I. Davis,  
Vice President

645.2/A1