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**REPORT OF INVESTIGATION OF (1) LEASE AND
PURCHASE BY SAN BERNARDINO COUNTY OF
MARANATHA CORRECTIONAL FACILITY IN THE
CITY OF ADELANTO AND (2) SALES OF COUNTY
SURPLUS PROPERTY**

October 12, 2005

Prepared for the County of San Bernardino

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I. INTRODUCTION¹

G|R submits this report on the role of Brett Granlund (“Granlund”) in influencing the County of San Bernardino to sign an agreement (the “Lease/Option”) to pay \$40 million in rent for a 10 year lease of a private jail facility (the “Maranatha Jail”). This report also discusses the results of G|R’s investigation of sales of County surplus realty made directly or indirectly to County personnel. This report includes an appendix of exhibits (“Appendix”) and interview transcripts, available through County Counsel.

As described in this report, the County approved the Lease/Option under time pressure created by the Maranatha Jail’s owner (“Maranatha”). Maranatha alleged that the jail would become unavailable unless the County entered into the Lease/Option in January 2005, before completing an ongoing appraisal. At all relevant times, Granlund’s employer, Platinum Advisors, LLC (“Platinum”), was a lobbyist for the County and a consultant to Maranatha. Although the following matters are not free from doubt, there is reasonable cause to believe that:

First: Platinum and Granlund violated Platinum’s contractual duty to the County to give it prior written notice of Platinum’s clients and conflicts of interest. Those clients included Maranatha; those conflicts of interest included Platinum’s role, through Granlund, of soliciting the County to enter into the Lease/Option.

Second: The contract violations committed by Platinum through Granlund likely influenced the County’s decision to approve the Lease/Option and to exercise the \$28 million option price notwithstanding the existence of a mold condition and the lack of an “as is” appraisal reflecting the actual, current value of the jail.

¹ **WARNING: This report constitutes a confidential attorney-client communication from the law firm of Gumport | Reitman (“G|R”) to the County. All statements made in this report are, and must be construed as, G|R’s opinions concerning disputed facts and inferences. This report does not result from a trial and is not based on the sworn testimony of witnesses. G|R was not an eyewitness to the underlying events. The statements made in this report are not free from doubt and are subject to dispute.**

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Third: After Granlund and Platinum marketed the Maranatha Jail to County Administrative Officer Mark Uffer (“CAO Uffer”), he encouraged the County’s Real Estate Services Department (“RESD”) to recommend the Lease/Option to the County Board of Supervisors (the “Board”) without waiting for the completion of an appraisal of the Maranatha Jail. In encouraging RESD to recommend Board approval of the Lease/Option without an appraisal, CAO Uffer knew that: (1) RESD had recommended waiting to complete an ongoing appraisal previously authorized by the Board and (2) the Sheriff’s Department had discovered and was concerned about a mold condition at the Maranatha Jail that could pose a health risk (or a substantial risk of litigation against the County by inmates and jail personnel) and that could require a substantial, protracted, costly remediation of the Maranatha Jail.

Fourth: On January 11, 2005, when the Board voted to approve the Lease/Option, the written report and recommendations in the agenda item submitted to the Board about the Lease/Option did not tell the Board that: (1) in violation of Platinum’s contract with the County, Granlund and Platinum had advised and represented Maranatha in marketing the Maranatha Jail to County representatives, including CAO Uffer; (2) the Board had time to obtain an appraisal because the California Department of Corrections (“CDC”) had orally agreed to give Maranatha an extension of its termination date and/or was willing to give Maranatha a further extension; (3) the mold condition at the Maranatha Jail might require extensive, protracted remediation and might pose a risk of substantial litigation against the County; and (4) the City of Adelanto disputed that its jail, which was in better condition than Maranatha’s, was unavailable to the County.

Fifth: On April 5, 2005, when the Board voted on exercising the \$28 million purchase option in the Lease/Option, the written report and recommendations in the agenda item submitted to the Board did not state that: (1) the seller, Maranatha, was assisted by Platinum and Granlund in violation of the conflict of interest provisions of Platinum’s contract with the County; (2) RESD had told the appraiser to cancel doing an

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“as is” appraisal and, instead, had told the appraiser to prepare a “prospective value only” appraisal that made dubious assumptions (including inaccurate assumptions that the Maranatha Jail would be fully remediated and repaired by October 1, 2005); (3) the mold condition at the Maranatha Jail continued to pose a substantial threat that the Maranatha Jail would not be available and that the County might subject itself to substantial litigation and/or liability unless the County performed protracted mold remediation.

Sixth: In July 2005, as questions arose about Granlund’s involvement in the Maranatha Jail transaction, Granlund incorrectly stated at his July 2005 interview by G|R: “There was never any kind of a recommendation, a pitch, a why-don’t-you. You know, none of that. There was no representation whatsoever of Moreland to the County.” 7/20/05 Granlund Int., p. 73, l. 20 - p. 74, l. 3.

Seventh: In July 2005, Granlund and CAO Uffer each may have made inaccurate and/or misleading statements about Granlund’s role in the Lease/Option; Granlund and CAO Uffer publicly made statements that arguably stated or implied that Granlund did not market the Maranatha Jail to the County and did not contact CAO Uffer about the jail until March 2005, after the Lease/Option was signed; in fact, as CAO Uffer subsequently acknowledged at his August 5, 2005 interview by G|R, Granlund marketed the Maranatha Jail to CAO Uffer in November 2004, before the Board approved the Lease/Option in January 2005.

Eighth: Platinum and Granlund have not cured or redressed Platinum’s violations of the conflict of interest provisions of Platinum’s contract with the County. As of the date of this report, the mold condition at the Maranatha Jail does not appear to have been remediated according to the recommendations originally made to the County by its environmental consultant, Clayton Group Services (“Clayton Group”), in a written report dated October 27, 2004. Before the Board voted on the Lease/Option and the purchase option, CAO Uffer was aware of the Sheriff’s Department’s staff’s concerns about the mold condition as reported by Clayton Group.

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G|R's recommendations appear at the end of this report.

Copies of several documents are attached to this report. Exhibit A is Platinum's contract with the County. Exhibits B and C are copies of two agenda items. Exhibit D is the RESD diary mentioned in this report. Exhibit E is an excerpt from the Clayton Group's report. Exhibit F is an MOU between Maranatha and the CDC. Exhibit G is a Dept. of Public Health report on the Maranatha Jail. Exhibit H is an excerpt from the disclaimers in the "prospective value only" appraisal. [REDACTED]

II. BACKGROUND

During 2004, the County considered leasing or purchasing one of two jails located in the City of Adelanto ("Adelanto"). One jail, the Maranatha Jail, was directly or indirectly owned and/or operated by one or more affiliates of Terry Moreland ("T/Moreland"). Those affiliates included Maranatha Corrections, LLC; Moreland Corporation; and/or Moreland Family, LLC (collectively, "Maranatha").

The other jail (the "City Jail") was owned and operated by Adelanto. The City Jail was smaller than the Maranatha Jail (500 beds versus Maranatha's 660 beds) but required substantially less repair than the Maranatha Jail.

Both jails were operated under multi-year contracts (in substance, leases) with the CDC, which made monthly payments under cost reimbursement formulas. The CDC paid Maranatha less than \$3 million annually.

In June 2004, the CDC sent a notice of termination of its contract with Maranatha based on its alleged violations of that contract. Maranatha disputed the CDC's assertions.

During 2004-2005, Granlund was an employee of Platinum. It concurrently provided consulting services to Maranatha and lobbying services to the County.

In January 2005, the County signed the Lease/Option, which provided that, subject to terms and conditions, the County would lease the Maranatha Jail from Maranatha for 10 years for approximately \$40 million in rent (i.e., \$4 million per year).

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The Lease/Option gave the County an option to purchase the Maranatha Jail. In April 2005, the County exercised its option to buy the Maranatha Jail for \$28 million. In addition to that purchase price, the County must also pay up to \$3.2 million in specified repairs to the jail. To date, Maranatha has not completed its performance.

III. SUMMARY

Subject to the disclaimers in Part I of the report, G|R submits the following answers to four questions asked of G|R by CAO Uffer:

- (A) Did Granlund participate in the negotiation of the terms and conditions of the lease and purchase of the Maranatha Jail or did he have other contacts with County staff regarding the lease and purchase of the jail?**

G|R concludes that there is reasonable cause to believe that: (1) without prior written full disclosure to the County, Granlund participated in negotiating at least one or more terms and conditions of the Lease/Option in violation of the conflict of interest restrictions in the lobbying contract between the County and Platinum; (2) the terms and conditions that Granlund participated in negotiating included the requirement that the County sign the Lease/Option in January 2005, without waiting for an appraisal of the Maranatha Jail; (3) Granlund had other contacts with County staff regarding the lease and purchase of the Maranatha Jail; (4) it is doubtful that, under the circumstances, including the lack of an appraisal and the presence of substantial mold, the Board would have approved the Lease/Option without an appraisal upon learning that Platinum and Granlund were improperly representing Maranatha.

- (B) Was the jail owned by the City of Adelanto immediately available to meet the Sheriff's needs?**

G|R concludes that there is reasonable cause to believe that: (1) neither the City Jail nor the Maranatha Jail was immediately available to meet the Sheriff's needs; (2) the Sheriff did not have an "immediate" need for a new jail because he would not have the staff available for a new jail for six to nine months; (3) the actual availability of the

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Maranatha Jail will remain unknown until all repairs, remodeling and substantial mold remediation are completed; and (4) the Maranatha Jail was not available (and was not remediated) on the projected completion dated of October 1, 2005.

(C) Have any fees or commissions been paid to Granlund relative to the lease and purchase of the jail?

G|R concludes that there is reasonable cause to believe that: (1) Granlund was a salaried employee of Platinum, and Granlund's employment contract with Platinum provided that Platinum had discretion to pay Granlund a bonus; (2) Maranatha was a client of Platinum's; (3) while Platinum received consulting fees from Maranatha and paid Granlund's salary, Granlund helped market the Maranatha Jail to the County; (4) a portion of Granlund's salary from Platinum is therefore attributable to Granlund's services in representing Maranatha; and (5) until Granlund's conduct became the subject of public controversy, Granlund may have expected to receive a bonus or commission from Platinum relative to the Lease/Option.

Granlund denies – and it further appears that Maranatha and Platinum deny – that Granlund has received or will receive any commission relative to the Lease/Option. The denials of Granlund, Maranatha, and Platinum, while entitled to some weight, are not sufficiently supported to be dispositive.

(D) In the review of the last five years of County surplus real property sales were there any violations of the Govt. Code § 1090, County Personnel Rules, or County Policy No. 11-11?

G|R concludes that there is reasonable cause to believe that, apart from the disputed Foster-Granlund transaction, three County employees have directly or indirectly purchased County surplus realty during the past five years. It is doubtful that any of the sales of surplus realty to those three employees likely violated Govt. Code § 1090, the County Personnel Rules, or County Policy No. 11-11. The County has many other kinds of real property transactions, including leases, real property tax assessments and tax sales,

Public Guardian sales, and other non-surplus sales, that G|R was not asked to investigate and that are not discussed in this report.

IV. METHODOLOGY AND DESCRIPTION OF INVESTIGATION

In July 2005, the County employed G|R to investigate and report on the role of James Foster ("Foster"), then Chief of Staff to 3rd District Supervisor Dennis Hansberger, in the County's sale of a one-half acre parcel of surplus realty to Granlund in 2001.

During July 2005, through CAO Uffer, the County requested G|R to investigate and report on two additional matters: (1) Granlund's role in the Lease/Option of the Maranatha Jail and (2) sales during the past five years of County surplus realty made directly or indirectly to County personnel.

During July-August 2005, the County provided G|R with numerous files, including the files maintained by RESD on the Lease/Option. In reviewing the history of the transaction, G|R found especially helpful the RESD diary contemporaneously maintained by RESD's Marilee Rendulich ("M/Rendulich"). G|R also obtained appraisal files from The Heath Group concerning its appraisal of the Maranatha Jail.

G|R obtained limited information from Granlund's employer, Platinum. That information included a copy of Granlund's unsigned written employment agreement with Platinum. In addition, Platinum provided a copy of the written agreement by Maranatha to employ Platinum as a consultant.

To date, Platinum has not provided other information requested by G|R. Both Platinum and Maranatha are represented by the same counsel; when that counsel did not provide certain information requested by G|R, G|R suspended its efforts to seek further information from that counsel. Accordingly, it is likely that Platinum and Maranatha have information not provided to G|R that could shed further light on the facts.

Beginning Tuesday, July 19, 2005, G|R conducted witness interviews, including an interview Granlund. Witnesses interviewed included: (1) Dean Arbatzis, (2) William Aylward, (3) Richard Beemer, (4) Rodney Blonien (5) [REDACTED] (6) Bill Cates,

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(7) Foster, (8) Granlund, (9) Dennis Hansberger, (10) Gary Henson, (11) [REDACTED] (12) Brian McCormick, (13) Gary Penrod, (14) [REDACTED] (15) [REDACTED] (16) David Slaughter, (17) CAO Uffer, and (18) [REDACTED]

In connection with investigating Granlund's role in the Maranatha Jail transaction, G|R reviewed the most recent Form 700 Statements of Economic Interest and campaign finance reports of all Board members for any references to Granlund, his employer (Platinum), or Maranatha that would shed light on the Maranatha Jail transaction. Because Form 700s and campaign finance reports are signed under penalty of perjury, G|R assumed the accuracy of those documents.

All interviews conducted by G|R were attended and transcribed by a court reporter. G|R conducted the witness interviews under rules designed to achieve consensual, on-the-record interviews on very short notice.

G|R told witnesses interviewed that the interview was voluntary; that the witness could decline to answer any question; that the witness was not under oath; that statements made on the record would be transcribed by the court reporter and would be transmitted to the Board; that the transcript might not remain confidential; and that G|R would not give weight to statements not made on the record.

G|R did not give weight to allegations and statements that witnesses did not make on the record, in the presence of a court reporter. G|R believed that, given the importance of the various matters under investigation by G|R, reliance on unrecorded statements created too great a risk of unreliability and confusion, and would preclude the Board from exercising its independent judgment concerning any inferences drawn by G|R.

G|R's investigation of prior sales of County surplus realty included substantial assistance provided by CAO Uffer and his staff (including particularly Associate Administrative Officer Gerry Newcombe ("G/Newcombe")) and by RESD staff. At G/Newcombe's direction, RESD prepared a grid chart of all purchasers of County surplus realty during the past five years. See App., Exs. D-E.

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At G|R's request, RESD thereafter compiled records showing the names of subsequent transferees of the initial purchasers of County surplus realty. At G|R's further request, RESD compared those names with the names of County employees to identify whether the immediate or subsequent transferees were County employees. G|R then sought and obtained additional records from RESD. See App., Exs. G

On September 22, 2005, after providing a draft of this report to County Counsel for comment, G|R discussed a further draft with CAO Uffer. On Monday, September 26, 2005, CAO Uffer requested that G|R change or delete parts of the draft report and delete at least one of the questions that CAO Uffer previously asked G|R to address in the report. After considering CAO Uffer's comments and their significance to the investigation, G|R revised and finalized the report.

G|R did not change the questions that CAO Uffer asked G|R to address in its report, because G|R believes that changing the questions would make this report misleading and would preclude the County from avoiding substantial ongoing risks.

During September-October 2005, before finalizing this report, G|R had further discussions with: (a) G/Newcombe, about delays in Maranatha's work and (b) Carl Alban ("C/Alban"), Director of the County's Architecture & Engineering Department ("A&E"), about a recent visit by the County's environmental consulting firm, Clayton Group, to the Maranatha Jail.

V. FACTS

A. 1988-2000: Granlund Serves in Assembly

During 1994-2000, Granlund was an Assemblyman. 7/20/05 Granlund Int., p. 6, ll. 6-10; p. 41, l. 14 - p. 45, l. 22. Foster served as Chief of Staff to Granlund during his first six months in the Assembly. See 7/21/05 Foster Int., p. 85, ll. 1-10. Until mid-2004, Granlund and Foster each had direct or indirect partnership interests in a billboard company ("CRILCO"). App., Ex. 7; 7/20/05 Granlund Int., p. 7, l. 8 - p. 8, l. 1.

///

B. 2001: Granlund Serves on Board of Prison Terms

Beginning in 2001, after leaving the Assembly, Granlund accepted a political appointment to serve as a member of the State Board of Prison Terms at an annual salary of approximately \$100,000. Granlund served on the Board of Prison Terms until the end of May 2002. 7/20/05 Granlund Int., p. 6, ll. 6-10; p. 41, l. 14 - p. 45, l. 22.

C. June 2002: Granlund Signs Salary/Bonus Contract with Platinum; Granlund Co-Guarantees Loan with Supervisor Biane

1. June 3, 2002: Granlund Signs Contract with Platinum

On or about June 3, 2002, Granlund entered into an oral employment agreement with Platinum, a lobbying and political consulting firm. An unsigned written version of the oral agreement (the "Granlund-Platinum Contract") provided that Platinum hired Granlund as an at-will employee at \$120,000 per year, plus expenses, benefits, and a discretionary bonus. App., Ex. 17; see 7/20/05 Granlund Int., p. 45, l. 18 - p. 46, l. 7.

According to Platinum's counsel, Morrison & Foerster, LLP, there is no signed version of the Granlund-Platinum Contract. See App., Ex. 17.

The bonus provision of the unsigned written version of the Granlund-Platinum Contract states: "Platinum, in its sole and exclusive discretion, may pay Employee a Bonus from time to time, subject to all withholding and payroll taxes. Employee understands that a Bonus is not earned nor vested until paid." App., Ex. 17, p. 1, ¶ 4.b.

2. June 27, 2002: Granlund & Paul Biane Co-Guarantee Loan

On June 27, 2002, less than three weeks after Platinum employed Granlund, he co-guaranteed with Paul Biane repayment of at least \$25,000 of a \$150,000 loan from Valley Bank to Mr. Biane's campaign committee, "Paul Biane for Supervisor." App., Ex. 26. The due date for the loan was December 13, 2003. *Id.* Supervisor Biane's campaign committee's finance reports reflect that the co-guarantees, and at least \$87,499 of the Valley Bank loan, remained outstanding well beyond December 2002-January 2003, when Supervisor Biane voted to approve a lobbying contract with Platinum. *Id.*

D. Approx. March- Dec. 2002: ITRF Dispute; Maranatha Hires Platinum

1. 2002: ITRF Dispute between CDC and Maranatha

As of 2002, Maranatha operated the Maranatha Jail pursuant to a multi-year contract with the CDC. See App., Ex. 62. The Maranatha entity that was the party to the contract with the CDC was Maranatha Corrections, LLC. Id. The term of Maranatha's contract with the CDC ran through October 31, 2007. App., Ex. 145.

By 2002, Maranatha had a dispute with the CDC about its right to audit and recover inmate telephone revenue funds ("ITRF"), generated when inmates made collect calls on the telephone facilities at the Maranatha Jail. See App., Exs. 12, 18, 62, 96, 145.

According to a March 18, 2002 memo by Art Stonebraker, CDC Staff Management Auditor, T/Moreland took the position, among others, that the CDC could not audit the ITRF because the CDC's contract was with Maranatha Corrections, LLC, and a different affiliate of T/Moreland's, Moreland Corporation, owned the Maranatha Jail and provided the inmate telephone services. App., Ex. 13.

By letter dated June 4, 2002, Tim Thompson ("T/Thompson"), President of Maranatha Corrections, wrote to CDC's Greg Harding that: (a) Maranatha Corrections was a "distinct and separate entity" from Moreland Corporation; and (b) "CDC's demand for information not in [Maranatha Corrections, LLC's] possession, custody or control is malicious and willfully bad faith conduct. Demand is herein made for CDC to cease its bad faith and harassing conduct by continuing to demand ITRF information in the possession of a separate and distinct entity." App., Ex. 18, p. 2.

2. Dec. 2002: Maranatha Hires Platinum as Consultant

In or about late 2002, T/Moreland asked Granlund to help resolve the ITRF dispute between Maranatha and the CDC. 7/20/05 Granlund Int., p. 57, ll. 8-18. According to Granlund, when he started working for Maranatha, "They hadn't been paid in six months. They were having serious cash flow problems with the facility." Id., p. 67, ll. 12-15.

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On or about December 4, 2002, Maranatha hired Granlund's employer, Platinum, pursuant to a written agreement (the "Maranatha-Platinum Contract"). The contract's terms did not limit Platinum's services to helping Maranatha resolve its ITRF dispute with the CDC. The contract stated:

(1) Maranatha retained Platinum "for consultation, strategic advice and advocacy representation with respect to . . . [p]erforming necessary and appropriate services, which may include, but not be limited to, personal contact with key interest groups and political leaders, building coalitions of support groups, and attending appropriate issue meetings, that further the work performed by Maranatha Corrections, Inc. in the State of California." App., Ex. 24, p. 1, § 1.a.

(2) Platinum's services would not include "lobbying" services as defined in the Political Reform Act; the parties would enter into a new and separate agreement if "the services to be performed become lobbying activities as defined by applicable law" App., Ex. 24, p. 1, §§ 1.b and 2.

(3) Maranatha would pay Platinum \$6,000 per month and would reimburse "all reasonable and necessary expenses incurred on behalf of" Maranatha. App., Ex. 24, p. 1, § 3. According to Granlund, "We've always charged them \$6,000 a month." 7/20/05 Granlund Int., p. 64, l. 4.

(4) The termination date of the contract was December 31, 2003. App., Ex. 24, p. 1, § 5.

Because Platinum apparently provided consulting, not lobbying, services to Maranatha, Platinum did not have to register as Maranatha's lobbyist. California law narrowly defines lobbying as seeking to influence the Legislature and certain rule-making activities of State agencies. Soliciting public contracts at the State or local level is not regulated as lobbying activity. See Govt. Code §§ 82002, 82039. Platinum and Granlund's conduct and conflicts of interest, however, became contractually regulated

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when Platinum entered into a lobbying contract with the County in or about December 2002-January 2003, as described below in this report.

According to Maranatha's counsel, the 2002 Maranatha-Platinum Contract is the only written agreement between Maranatha and Platinum. See App., Ex. 24. As a result, because Platinum continued to represent Maranatha during 2004-2005, the parties apparently operated under an oral extension (or modification) of the written contract.

E. Dec. 17, 2002: County Hires Platinum as Lobbyist

1. Board Approval of SBC-Platinum Contract

On December 17, 2002, with Supervisor Hansberger abstaining, the Board voted 4-0 to approve the following written recommendation made to the Board to approve a lobbying contract (the "SBC-Platinum Contract") between the County and Platinum:

RECOMMENDATION:

1. Approve Contract with Platinum Advisors, LLC in an annual amount not to exceed \$108,000 for provision of state advocacy pertaining to Administration, regulatory, and budgetary/fiscal issues for the period of January 1, 2003 to December 31, 2004. [App., Ex. 25, p. 1.]

When asked about his role in procuring the SBC-Platinum Contract, Granlund stated: "I would like to think that I was influential in it." 7/20/05 Granlund Int., p. 46, ll. 14-15. At the time the Board voted on the contract, Granlund was a co-guarantor with Supervisor Biane, in his personal capacity, of the \$150,000 loan from Valley Bank to Supervisor Biane's campaign committee. App., Ex. 26.

After the Board approved the SBC-Platinum Contract, described below, Granlund had frequent contact with County personnel. According to Granlund, he probably has "a conversation with someone at the County at least 5 to 20 times a week." 7/20/05 Granlund Int., p. 81, ll. 21-23. Granlund stated that, by reason of his frequent talks with County personnel, "I can't say I never talked about the prison." Id., p. 82, ll. 9-11.

2. **The Terms of the SBC-Platinum Contract**

The SBC-Platinum Contract provided that: (a) the contract was effective on January 1, 2003 and would continue through December 31, 2004 (App., Ex. 3, p. 3, §§ 2-3); and (b) the County would pay Platinum \$9,000 per month (*id.*, p. 4, § 4).

The SBC-Platinum Contract stated that the scope of Platinum's services included: (a) assisting "the County in developing and implementing an effective state advocacy strategy and annual legislative program" to influence state laws and policies and to increase funding for the County (App., Ex. 3, p. 2, § 1.A); (b) representing "County interests in meetings with members of the California Legislature and/or their staff, and with state agencies, boards, commissions, committees and other bodies as appropriate" (*id.*, p. 2, § 1.D); and (c) preparing and delivering "briefings and activity reports as needed, including an annual report summarizing services and results" (*id.*, p. 2, § 1.F).

The SBC-Platinum Contract required Platinum to comply with detailed conflict of interest provisions. App., Ex. 3, pp. 4-6, §§ 4-6. The provisions are significant because they governed how Platinum and its employees, who included Granlund, were supposed to behave in dealing with the County.

Policy Statement: The SBC-Platinum contract stated the County's policy against conflicts of interest: "The County's current and long-standing policy is that the Contractor does not undertake representation of any organization, individual or entity whose interests are in conflict with the interests of the County." App., Ex. 3, p. 4, § 5.B.

Duty to List Clients in Exhibit A: The SBC-Platinum Contract stated: "County recognizes that Contractor currently represents clients listed in Attachment A." App., Ex. 3, p. 4, § 5.E. Attachment A to the SBC-Platinum Contract did not list Maranatha, even though it was an existing client of Platinum's. The contract further provided: "Contractor shall furnish an updated list of all current clients for submission to [the] Board of Supervisors along with this contract." *Id.*, Ex. 3, p. 4, § 5.F. Platinum did not furnish an updated list correcting the omission of Maranatha from the list.

Existing Clients – Duty to Give Prior Written Notice to County: The SBC-Platinum Contract stated: “In the event that issues arise with the Contractor where specific interests from existing clients might conflict with each other, the Contractor will give both clients written notice of such conflict, for the purpose of full disclosure. In the event a conflict is determined to exist, the Contractor, on a case-by-case basis after discussion with both clients, will remain neutral on the issue that is in conflict and shall subcontract for other representation.” App., Ex. 3, p. 4, § 5.E (emphases added). It does not appear that Platinum/Granlund provided prior written notice concerning Maranatha.

New Clients – Duty to Give Prior Written Notice to County: The SBC-Platinum Contract stated: “In the event Contractor desires to undertake governmental advocacy on behalf of another organization, the Contractor will give the County written notice of such proposed employment, for the purpose of determining potential conflicts of interest. The notice shall specify the name and address of the party being represented, and the scope of work to be undertaken on their behalf. All information received shall be treated in confidence, and shall be returned to the Contractor upon making a determination as to the presence or absence of a conflict.” App., Ex. 3, p. 4, § 5.C (emphases added). It does not appear that Platinum/Granlund provided prior written notice concerning Maranatha.

Duty to Prevent Financial Interests and Business Relationships: The SBC-Platinum Contract provided: “Contractor shall make all reasonable efforts to ensure that no County officer or employee whose position in the County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this contract or any competing offer or shall have any business relationship to the Contractor or officer or employee of the Contractor.” App., Ex. 3, p. 6, § 7.L.

Duty to Comply with ICMA Code of Ethics: The SBC-Platinum Contract stated: “Contractor shall adhere to the ICMA Code of Ethics as adopted by the County Board of

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Supervisors on August 10, 1999.” App., Ex. 3, p. 5, § 6.A. The ICMA Code of Ethics provides that “certain principles . . . shall govern the conduct” of every ICMA member. App., Ex. 6. The ICMA Code of Ethics states that its members “shall”: (a) “Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of public elected officials and employees, and of the public”; and (b) “Refrain from participation in the election of the members of the employing legislative body.” *Id.* The ICMA Code of Ethics’ Guidelines explain that the ban on campaign participation includes a ban on campaign contributions:

Elections. Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

[App., Ex. 6.]

F. Early 2004: Granlund Speaks to Sheriff Penrod about Maranatha Jail

By 2003, the County urgently needed to deal with its inmate overcrowding problem at County jails. Sheriff Gary Penrod stated at his interview: “We needed to do something as soon as we possibly could.” 8/11/05 Penrod Int., p. 21, ll. 3-4. Total inmate capacity of the County’s facilities consisted of approximately 5,200 inmates; by 2004, the County’s inmate population reached approximately 5,475 inmates. App., Ex. 250, p. 36.

Granlund had every reason to know of the County’s jail overcrowding problem because he spoke weekly to Sheriff Penrod. According to Granlund, Sheriff Penrod is

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“my friend. We represent the County. We served together as elected officials. We got elected at the same time. We talk weekly.” 7/20/05 Granlund Int., p. 61, ll. 4-7.

Until approximately June 2004, Rick Oakley was City Manager of Adelanto. Oakley’s successor as City Manager was William Aylward (“W/Aylward”), who previously served as Finance Director of Adelanto. 7/28/05 W/Aylward Int., p. 6, l. 11 - p. 7, l. 1. According to W/Aylward, representatives of the Sheriff’s Department “were reviewing” the City Jail in or about January 2004. *Id.*, p. 7, ll. 12-21.

In or about early 2004, Sheriff Penrod told Rick Oakley that the County might be interested in purchasing the City Jail. *See* 8/11/05 Penrod Int., p. 6, l. 4 - p. 7, l. 3. Shortly thereafter, Sheriff Penrod received a telephone call from Granlund. *Id.*, p. 7, ll. 10-14. Sheriff Penrod stated at his interview:

As a result of that [discussion with Adelanto City Manager Rick Oakley], and I don’t know how, Mr. Moreland and Brett Granlund heard about that and Brett called me and said he represented Mr. Moreland to the State, to the Department of Corrections, and they might be interested in selling their jail. [8/11/05 Penrod Int. p. 7, ll. 4-9.]

Granlund acknowledged talking about the Maranatha Jail with Sheriff Penrod:

QUESTION: Did you have any discussions with anyone at the County, concerning the County’s buying or leasing Maranatha?

ANSWER [GRANLUND]: Yes, that – never advocating, naturally. The discussion was that Gary Penrod – “You might be able to get this place if you go talk to Moreland.” I gave him inside information that there was a big fight going on at [the CDC] with Moreland. [7/20/05 Granlund Int., p. 65, ll. 5 -12.]

G. Late 2003-Early 2004: Sheriff & Staff Begin Studying Adelanto Jails

During 2004, the County had internal discussions about three possible short-term solutions to the County's inmate overcrowding problem: (1) acquire the City Jail, which had a capacity of 500 inmates; (2) acquire the Maranatha Jail, which had a capacity of 668 inmates but needed substantially more repair work than the City Jail; or (3) stop housing the approximately 660-675 federal inmates currently occupying County jails. See App., Ex. 84, 90, 119-20. All three short-term solutions were problematic.

As to the first option, Adelanto had a multi-year contract with the CDC that could be terminated only for cause, so that the County had to determine whether Adelanto had cause to terminate. As to the second option, the Maranatha Jail required extensive repairs and remediation, so that the County had to determine the extent and feasibility of the repairs and remediation. As to the third option, the 660-675 federal inmates occupying County jails generated about \$15-\$16 million annually in federal gross revenues to the County; the Sheriff's Department estimated that a significant fraction of those revenues were used by the County to defray the overall cost of housing inmates. See App., Ex. 89, 90, and 93 (Sheriff's position that County incurs about \$42 per day in costs per inmate, while the U.S. Marshal reimburses the County at a rate of \$66 per day per federal inmate).

During 2003-2004, various Sheriff's Department personnel participated in discussions relating to the inmate overcrowding problem or the Lease/Option. In addition to Sheriff Penrod, those Sheriff's Department personnel included: (1) Lt. Wellott, Commander of the Administrative Support Unit for the Sheriff's Department's Detentions and Corrections Bureau (the "DCB"), (2) Captain Richard Beemer ("R/Beemer") in the Sheriff's Bureau of Administration, (3) Sheriff Administrative Manager Wendy Britt ("W/Britt"), (4) Deputy Chief Bill Cates ("B/Cates") of the DCB, and (5) DCB Maintenance Superintendent Doyle Jenkins ("D/Jenkins"). See App., Exs. 48, 50, 61, 74, 81.

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Both Sheriff Penrod and ██████████ regarded acquiring a jail in Adelanto as merely a temporary solution, not a permanent substitute for a planned new 3,000 to 5,000 bed jail facility in Apple Valley, near the juvenile detention facility. 8/11/05 Penrod Int., p. 20, ll. 15-19; ██████████

██████████. According to Asst. CAO Dean Arbatzis ("D/Arbatzis"), the projected cost of the High Desert (i.e., Apple Valley) facility is \$300 million, and it will take five to seven years to build a new jail. 7/26/05 D/Arbatzis Int., p. 26, ll. 3-20; p. 27, ll. 14-22.

H. Early 2004: Granlund & T/Moreland Meet with ██████████

In or about early 2004, ██████████ attended a pre-arranged meeting with T/Moreland at the Maranatha Jail. The purpose of the meeting was to discuss in general terms "the potential acquisition" by the County of the Maranatha Jail. ██████████

██████████ Before the meeting started, T/Moreland introduced Granlund to ██████████ "as a consultant, he was helping to consult on this project, something to that effect. I understood him to be a consultant to Moreland on the project. What his role was going to be, I don't know." ██████████

During the meeting, Granlund "didn't say much." ██████████

I. June 2004: Platinum Represents CCA; County Amends Platinum's Contract; Granlund Fights with Foster re Platinum's Client AshBritt

1. Approx. June-Aug.: Platinum Represents of CCA

During approximately 2002-2003, the State twice reduced funding by 30% for California Charter Academy ("CCA"), a state-chartered, Victorville-based operator of charter schools having an enrollment of approximately 8,200 students. App., Ex. 60.

According to Foster, Granlund "would occasionally make comments that he was trying to help them [CCA] out through some tight times." 7/19/05 Foster Int., p. 35, ll. 4-8. During 2003-2004, Platinum was a registered lobbyist for CCA. App., Ex. 40, 46, and 63. As of March 2004, Platinum had received \$51,736 in lobbying fees from CCA. Id., 46. Ex. It does not appear that Platinum gave the County prior written notice that

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Platinum proposed to represent, or was representing, CCA, even though it appears that such prior written notice was required by § 5.C of the SBC-Platinum Contract.

By June 2004 (and prior to June 22nd), at the request of State Superintendent of Public Instruction Jack O'Connell, an investigation of CCA had been initiated by his office and the offices of the San Bernardino County and Orange County superintendents of schools, the two counties in which the Academy's four chartered schools were located. App., Ex. 60. By June 2004, the San Bernardino County and Orange County offices of education contracted with Fiscal Crisis and Management Team ("FCMAT") to investigate the finances of CCA.

On June 22, 2004, with Chairman Postmus voting for and Supervisor Hansberger voting against, the Board voted 4-1 to approve a contract/grant of \$77,000 to CCA. App., Ex. 58. Chairman Postmus' vote provoked negative publicity because his father, Bill Postmus, Sr., was an employee of CCA. *Id.* According to Chairman Postmus' office, County Counsel had advised him that CCA's employment of his father did not represent a conflict of interest because CCA was a public agency and conflict of interest laws would not in any event prohibit an official from voting on matters in which a father, as opposed to a spouse or dependent, would benefit. *Id.*

For purposes of this report, the controversy arising from Chairman Postmus' relationship with his father is relevant to show the County's and the public's sensitivity to perceived conflicts of interest. It is not speculative to surmise that the controversy and outcry about the June 22nd CCA vote would have increased significantly if it had been disclosed that Platinum, the County's lobbyist, was also advising CCA, the proposed recipient of funds from the County. It does not appear that Platinum disclosed to the County the extent of Platinum's involvement with CCA.

Also on June 22nd, the Board voted to amend the SBC-Platinum Contract to increase Platinum's monthly compensation from \$9,000 to \$16,000. App., Exs. 4, 54, 56, and 57. The amendment recited that the County needed "increased services resulting

from the need for overall management of the County's Legislative Program in Sacramento by Contractor, requiring the addition of staff resources on the part of Contractor." Id., Ex. 4, p. 1.

2. June 29, 2004: CDC Sends Notice of Termination to Maranatha

On June 29, 2004, the CDC notified Maranatha in writing that, effective September 30, 2004, the CDC would terminate its contract with Maranatha. App., Ex. 62. The CDC addressed its notice of termination to T/Moreland and his affiliates, including Maranatha Corrections, LLC, Moreland Family LLC, Moreland Corporation, and Moreland Family Trust. Id., p. 1. The CDC's notice of termination stated:

Maranatha has breached both the letter and the spirit of the Contract by refusing to account for the [Inmate Telephone Revenue Funds ("ITRF")], refusing to cooperate with the State's auditors and refusing to produce telephone records. The available evidence, including your own representations, concealments, and surreptitious conduct, establishes to a reasonable certainty that there has been misappropriation of ITRF under the per diem rate system. [App., Ex. 62, p. 13]

The CDC's notice of termination further stated, among other things, that:

Grounds for Termination

The grounds for termination of the Contract are set forth below as follows:

1. Maranatha has misappropriated, either directly or as an accomplice with one or more other companies and/or persons, Inmate Telephone Revenue Funds (ITRF) in an amount estimated to be well in excess of \$1 million.
2. The [Maranatha Jail] is either unwilling or unable to account for all ITRF monies generated at [the jail], in material

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breach of Maranatha's contractual duty to separately account for such funds. [App., Ex. 62, p. 1.]

The CDC's notice of termination further stated: (1) Maranatha Corrections, LLC had represented to the CDC that "The telephone services are provided to Maranatha by its landlord" (App., Ex. 62, p. 2); (2) in making that assertion, Maranatha Corrections "did not disclose the identity" of its landlord (*id.*); (3) at a meeting on July 5, 2002 between the CDC and Maranatha Corrections' staff, "you were specifically asked who the landowner of [the Maranatha Jail] was and you refused to reveal that information" (*id.*, p. 3); (4) the CDC had determined that Moreland Corporation and Moreland Family, LLC had some "interest" in the Maranatha Jail (*id.*); (5) T/Moreland "personally exert[s] full control over the Moreland financial empire and its entire family of close corporations" (*id.*, p. 5); and (6) "It therefore appears to us that, for purposes of the issues discussed herein, there is no meaningful distinction between Maranatha, Moreland Corporation, and Moreland Family, LLC, since they are all merely extensions of you" (*id.*).

Maranatha very strongly denies all the CDC's assertions and alleges that they were false and defamatory. Maranatha further alleges that the CDC had no right to claim the ITRF or to inspect ITRF records held by another T/Moreland affiliate. The dispute between the CDC and Maranatha was made possible because their contract did not specifically address the subject of ownership of ITRF. See App., Ex. 96.

J. Approx. July-Sept. 2004: Granlund Meets Weekly with CDC; Platinum's AshBritt Conflict; Mold at Maranatha Jail

1. Approx. July-Aug. 2004: Granlund Begins Meeting Weekly with CDC; T/Moreland Tells Granlund about County Negotiations

After the CDC sent its June 2004 termination notice to Maranatha, Granlund met weekly with the CDC. 7/20/05 Granlund Int., p. 9, ll. 5-11. T/Moreland told Granlund:

. . . . Now that they've opened that door of termination, I'm not willing to let them out of that termination because I may

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not want to do business with them.” That’s when they said, “I’m going to see if I can sell it to the sheriff.” [7/20/05 Granlund Int., p. 60, ll. 5-9.]

Granlund took credit at his interview for helping devise this strategy:

I had also crafted or created an out so that [Maranatha] could get out of the contract if they decided to. That was something that the city of Adelanto had neglected to do while they were negotiating with the Sheriff and the County. They never took care of the business on the State side.

When they got right down to it, it was, “No, we won’t let you out of the contract.” So the Adelanto City Jail was of no use to the Sheriff. He wanted a place to house inmates. We had very brief conversations relative to – “Hey, Brett, What’s going on with the facility? Can we buy it if we want to?”

“Yeah, it can be, but I got to take my direction from Moreland on what he wants me to do with the contract up here.” [7/20/05 Granlund Int., p. 68, ll. 11-25.]

According to Granlund, T/Moreland “would keep me informed that we’re working, we’re negotiating with the CAO, and we’re negotiating with the Department of Real Estate Services – the folks, you know, that do that.” 7/20/05 Granlund Int., p. 77, ll. 9-16. Granlund also was periodically updated on County negotiations by Maranatha’s T/Thompson. *Id.*, p. 76, ll. 7-16. Granlund stated at his interview:

Terry’s company had already met with somebody at some level in the – relative to, “We might be interested in selling this. There’s a window that’s opened up that we can get out of the contract. We’re mad at the State. If we do get

out, tough for the State. If we don't find something to do with the prison, we're going to stay."

My job was to keep the State at bay. We're going to work with the sheriff. We renewed the State contract on an ongoing addendum. It was an MOU. We created, I think, eight addendums to an MOU that kept the contract alive basically at a very profitable rate for Moreland and kept it alive from the original September 1st closing date [in 2004], ultimately, through June 30th [2005]. [7/20/05 Granlund Int., p. 61, ll. 10-22.]

2. June-July 2004: Granlund Solicits County for AshBritt

By 2004, Foster was Chief of Staff to Supervisor Hansberger. In or about May 2004, Foster signed an agreement to pay \$68,700 to Granlund to buy out Granlund's 30% general partnership interest in CRILCO. App., Ex. 47; 7/20/05 Granlund Int., p. 10, ll. 16-22 (\$66,000-\$67,000). Financial records of CRILCO reflect that the buy out closed between June 3-August 9, 2004. App., Ex. 49.

Beginning on or about June 8-14, 2004, at about the time Foster bought out Granlund's interest in CRILCO, Foster opposed Granlund's efforts to solicit the County to award a tree removal contract to a Platinum client named AshBritt Environmental ("AshBritt"), a disaster recovery firm. See App., Ex. 43, 51-52; *id.*, Ex. 218; 7/20/05 Granlund Int., p. 50, l. 25 - p. 51, l. 4; p. 89, l. 2 - p. 92, l. 10.

At the time, AshBritt had hired Platinum to solicit tree removal work from the County in connection with the County's \$70 million bark beetle tree removal project, involving funds provided by the Natural Resources Conservation Service ("NRCS") of the U.S. Dept. of Agriculture. See 7/20/05 Granlund Int., p. 50, l. 25 - p. 51, l. 4; p. 89, l. 2 - p. 92, l. 10; 7/21/05 Foster Int., p. 26, ll. 3-21; App., Ex. 55. NRCS opposed having its funds utilized to pay an outside contractor, instead of the County. *Id.*, Ex. 55.

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Granlund's conduct in soliciting the County to award a contract to AshBritt is significant. That conduct appears to show that, in violation of the conflict of interest terms in § 5 of the SBC-Platinum Contract, Granlund and Platinum undertook to represent a conflicting interest without giving prior written notice to the County and getting its informed consent. Granlund withdrew only after Foster objected, and, when Granlund did withdraw, he indicated a concern about having a conflict of interest. This tends to show that Granlund knew that there were conflict of interest restrictions on his ability to solicit the County to award contracts to Platinum's consulting clients.

According to Granlund, he was told by Foster: "I don't want you representing that hurricane hunter from Florida in this County." 7/20/05 Granlund Int., p. 51, ll. 19-21. Granlund replied: "Fine. I don't want a conflict. We don't need conflicts." *Id.*, p. 51, ll. 21-22. According to Granlund: "I conflicted out at Foster's request and referred them" to another consulting firm. *Id.*, p. 51, ll. 23-25. Granlund further stated: "There is a piece of business that, you know, I should be able to represent and, yet, because Jim didn't want me to, period – 'You can't do that [sic].'" *Id.*, p. 49, l. 12 -p. 52, l. 7.

On Granlund's representing AshBritt, Foster stated at his interview: "I suggested to him that he shouldn't be trying to lobby the County when he's the County's lobbyist." 7/21/05 Foster Int., p. 88, ll. 14-23; *see id.*, p. 21, ll. 2-7.

Granlund's dealings with AshBritt are also relevant because they appear to show that Granlund initially was less than forthcoming about Platinum's fee arrangement with AshBritt. This point is relevant to determining whether Granlund should be relied upon to accurately state the terms of Platinum's compensation arrangements with Maranatha.

Granlund initially stated at his interview that AshBritt did not agree to pay a bonus to Platinum if it procured a tree removal contract from the County. 7/20/05 Granlund Int., p. 87, ll. 14-18. Upon further questioning, however, Granlund acknowledged that AshBritt's consulting contract with Platinum may have required AshBritt to pay "performance based" fees to Platinum. 7/20/05 Granlund Int., p. 88, ll. 10-12.

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According to Foster, "Brett had told me at one time he was going to make a \$250,000 commission if he could land this contract with the County." 7/19/05 Foster Int., p. 21, ll. 3-4. Foster further stated at his interview that, after Granlund "stepped back" from representing AshBritt and turned the client over to David Ellis ("D/Ellis") of Delta Partners LLC, Granlund "hinted" to Foster that Granlund would share in a commission if D/Ellis procured a contract from the County for AshBritt. 7/19/05 Foster Int., p. 29, l. 21 - p. 30, l. 6. Granlund denies (and D/Ellis is believed to deny) that Granlund made any such arrangement with D/Ellis. App., Ex. 353. According to Granlund, D/Ellis and former State Senator Jim Brulte currently represent AshBritt under "private consulting contracts" that Granlund has not seen. 7/20/05 Granlund Int., p. 94, l. 23 - p. 95, l. 18.

3. Mid-July 2004: Granlund Intervenes in Foster's Employment

During July 2004, Supervisor Biane requested County Counsel to provide advice on whether the Board had authority to terminate the Chief of Staff of one of the Board members. App., Ex. 65. There is no dispute that Supervisor Biane's inquiry related to Foster, who was then Chief of Staff to Supervisor Hansberger.

The July 2004 discussions concerning the possible termination of Foster's employment are significant because Granlund involved himself in those discussions; further, Granlund involved himself in those discussions shortly after Foster criticized Granlund's conflicts of interest in soliciting the County to award a contract to AshBritt. Accordingly, Granlund's intervention could be construed as an effort by him to remove Foster as an obstacle to Platinum's ability to solicit County contracts for Platinum's clients, including Maranatha, not just AshBritt.

On or about July 14, 2004, Granlund and D/Ellis, met with Supervisor Hansberger, Foster, and others. Granlund and D/Ellis told Supervisor Hansberger that Foster was alienating other Board members and undermining Supervisor Hansberger's ability to work with the Board. App., Exs. 349, 351, and 352. It appears that, close in time to this meeting, Granlund referred AshBritt as a client to D/Ellis. App., Ex. 352.

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According to D/Ellis, he notified Supervisor Hansberger of Foster's "destructive ways" because "I was concerned about Foster losing his job." App., Ex. 351. According to Granlund, he and D/Ellis met with Supervisor Hansberger to make him and Foster aware "of a brewing attempt to fire" Foster. *Id.* According to Foster, Granlund and D/Ellis indicated that the Board, "excluding my boss, of course, felt like I needed to be removed," or transferred to another post. 7/19/05 Foster Int., p. 36, ll. 17-24.

By this time, both Foster and Supervisor Hansberger had raised issues concerning Platinum's clients. Supervisor Hansberger had recently dissented from the County's awarding \$77,000 to CCA, a Platinum client. Similarly, Foster had opposed the County's awarding tree removal work to Platinum's client AshBritt.

4. Aug. 20, 2004: CDC and Maranatha Sign MOU

On August 20, 2004, the CDC and Maranatha signed a memorandum of understanding ("MOU") that extended to October 31, 2004 the termination date of the CDC's contract with Maranatha to operate the Maranatha Jail. App., Ex. 71. The MOU stated that the purpose of the extension was "to provide the parties additional time to discuss and resolve the issues on a permanent basis." *Id.*, p. 2, ¶ 4.a.

5. Approx. Aug.-Sept. 2004: Sheriff Tells CAO about Jail

According to CAO Uffer, he received a call in "late summer, early fall" of 2004 from Sheriff Penrod, "saying that, you know, they had an opportunity to pick up a jail in the High Desert. They were looking at the couple of jails so that started the process." 8/5/05 CAO Uffer Int., p. 9, ll. 15-22.

6. Sept. 1-29, 2004: Clayton Group's 1st Mold Report

During September 1-29, 2004, at the request of [REDACTED] and/or [REDACTED] of the Sheriff's Department, an environmental consulting firm, Clayton Group, performed and reported on its "Phase I fungal evaluation" of the Maranatha Jail. App., Ex. 77, p. 1;

[REDACTED]

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The results of this Phase I test led Sheriff's Department's D/Jenkins to request Clayton Group to perform a follow-up test, which occurred in October. App., Ex. 77. At some point prior to approval of the Lease/Option, CAO Uffer learned that the Sheriff's Department had concerns about the mold condition. 8/5/05 CAO Uffer Int., p. 24, ll. 2-8.

K. October 2004: More Contacts Between Granlund and County; Clayton Group's 2nd Mold Inspection; Repair Cost Issues; RESD Log

1. Oct. 2004: Granlund Attends County Inspection of Jail

According to Granlund, he was present at the Maranatha Jail when, in or about October 2004, County personnel, including Sheriff Penrod, Chairman Postmus, and Deputy Chief B/Cates, visited the Maranatha Jail. 7/20/04 Granlund Int., p. 69, l. 5 - p. 71, l. 14. Asst. CAO D/Arbatzis and other County personnel also visited the jail on that occasion. 7/26/05 D/Arbatzis Int., p. 7, l. 20 - p. 9, l. 9. In addition to Granlund, another Platinum representative named Beau Biller may have been present at this visit. 7/26/05 D/Arabatzis Int., p. 7, l. 20 - p. 8, l. 21.

Granlund stated at his interview that his encounter with County representatives at the Maranatha Jail happened "by chance." 7/20/05 Granlund Int., p. 72, ll. 10-12 ("It was by chance that I ran into all of them at the facility that one time"). Granlund further stated, however, that Sheriff Penrod gave Granlund advance notice that Sheriff Penrod would be there. Id., p. 70, l. 15 - p. 71, l. 11.

According to D/Arbatzis, the purpose of the visit "was to look to see if it would be a viable facility," and he attended in place of CAO Uffer. 7/26/05 D/Arbatzis Int., p. 9, l. 7 - p. 10, l. 9. When asked whether the subject of buying the jail was discussed during this visit, D/Arbatzis stated: "Sure." Id., p. 11, ll. 22-24. D/Arbatzis did not recall whether Granlund participated in the sale discussions during that visit. Id., p. 11, l. 22 - p. 12, l. 22. D/Arbatzis stated, "I was more concentrating on not spending 30 million dollars that day and getting out of there[.]" Id., p. 13, ll. 6-11.

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D/Arbatzis recalled that, during the visit, Supervisor Postmus, T/Moreland, D/Arbatzis, and possibly others met in a conference room at the jail:

QUESTION: . . . Did anyone, during the conference room meeting that took place during this tour, talk about buying or selling that facility?

ANSWER: Oh, yeah. They were – Moreland was very interested in getting out of that contract regarding – with the State of California. He had complained up the wall regarding his interactions with the State of California. That’s the only time I spoke with Mr. Moreland directly. He just did not like the way the State did business, they paid slow, et cetera, et cetera. He wanted to find some other viable solution for his facility to be operated under. He was also talking about getting out and cancelling his contract with the State.

QUESTION: Did he name a price?

ANSWER: I’m trying to remember. It was kind of dicey. We were still talking back and forth. I know I threw out a 30 million dollar number and that’s what it turned out to be. Other than saying – I don’t really remember.

I think what I was told by [Supervisor] Bill [Postmus] at the time was, “We need to get working on this right away.” In the meeting, I remember having him say that. And I said, “Whoa. Whoa. Whoa. You can’t just buy a building in a month or two. It’s just like buying a house, we have to do due diligence.” “Well,” he said, “work on it as fast as you can,” in terms of getting the facility. [7/26/05 D/Arbatzis Int., p. 13, l. 12 - p. 14, l. 14.]

D/Arabatzis' recollection of this conference room discussion is relevant because it tends to show that T/Moreland had little interest in renewing his contract with the CDC. It is also relevant because it shows that T/Moreland was likely aware that County staff were under some time pressure from within the County to process the possible acquisition of the Maranatha Jail as quickly as possible. Thereafter, Granlund and T/Moreland used time pressure to market the Maranatha Jail to the County, as described below.

2. **Approx. Oct. 2004: Granlund Makes Sales Pitch re Maranatha to Foster & Other County Personnel**

According to Granlund, he spoke to Foster about the Maranatha Jail in or about early October 2004. 7/20/05 Granlund Int., p. 74, ll. 11-15. Granlund stated at his interview that he told Foster: "You know, Gary's interested in buying that jail. And I represent those guys. I might be helpful with that." *Id.*, p. 65, ll. 5-15. Granlund stated:

QUESTION: Tell me as best you can recall everything that was said in this conversation [with Foster].

ANSWER [GRANLUND]: It was -- I was talking with the sheriff the other day. He's interested in asking the Board for some more jail space. I was talking with him about -- I don't believe I mentioned Maranatha. I may have said, you know, "This one might come available," not as "Would you like to buy it?"

It was -- "I don't know if I [can] hold this contract together with the State and, you know, it continues out the balance of ten years. Or if this thing is going to get terminated, we're in the middle of a real struggle with the State. And I don't know if we're going to resolve it." And I said, "Penrod had mentioned to me that he's looking for more space."

His reaction was very aggressive and as I can tell you, quote, “The son of a bitch is an empire builder. He doesn’t need any more bed space, and he will not have any more jail facility,” end quote. . . . [7/20/05 Granlund Int., p. 74, l. 16 - p. 75, l. 9.]

The foregoing is Granlund’s version of the conversation. Even Granlund’s version reflects that he made a classic sales pitch, i.e., “Now! For A Limited Time Only!” to Foster in an effort to create the impression that the Maranatha Jail would shortly become unavailable. It appears that Granlund used the same sales technique with other County personnel. According to Granlund:

I did from time to time have conversations, but very limited, on behalf of the County [sic] with the County to let them know what I was doing in Sacramento – in other words, to let them know that I had this contract in shape where it could go long-term and it could remain as a State facility. [7/20/05 Granlund Int., p. 68, ll. 4-10.]

3. Oct. 18, 2004: Clayton Group Conducts 2nd Mold Inspection

On or about October 18, 2004, Sheriff’s Department representatives, including D/Jenkins, returned to the Maranatha Jail to conduct a follow-up investigation with Clayton Group of the mold previously seen at the jail on September 1, 2004. See App., Ex. 77, p. 2. D/Jenkins was accompanied by John McGarrigle, an Industrial Hygienist from Clayton Group. App., Ex. 74.

During the inspection, Clayton Group took mold samples from floors and inside walls. App., Ex. 74. D/Jenkins reported the following day to Deputy Chief B/Cates that Clayton Group took mold samples “to determine the extent of contamination and methods required to eliminate any mold present behind wall and floor coverings.” Id.

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During this inspection, Clayton Group's McGarrigle was told by D/Jenkins and other County representatives that "considerable painting had been conducted in areas where suspect visible mold had been previously observed during the original visit on September 1, 2004." App., Ex. 77, p. 2. McGarrigle further noted: "Clayton observed a number of inmates white washing walls throughout the facility." Id.

4. Oct. 19, 2004: D/Jenkins Estimates Beds & Repair Costs

In a memo dated October 19, 2004, D/Jenkins told Deputy Chief B/Cates: (a) the "stated" capacity of 1,000 beds at the Maranatha Jail "is not attainable within the BOC guidelines for required floor space and fixture ratios"; and (b) "[d]ayroom floor space alone limits the population to 668 inmates and fixture ratios fall short as well at 880 max[.]" App., Ex. 74. According to [REDACTED] "I felt Moreland had misrepresented the capacity of the facility." [REDACTED]

In the October 19th memo, D/Jenkins further stated: (a) "[t]here is a lack of vertical clearance in many Dorm and Cell areas that can not be corrected"; (b) including some repairs that might be considered optional, the inspection had identified more than \$5 million in estimated repairs that "might require work to make it suitable for us to occupy"; and (c) "The cost for each item is based on our observation of conditions at the facility and the actual cost could be either substantially lower or higher." App., Ex. 74.

5. Oct. 26, 2004: Sheriff Gives Update to Board

On October 26, 2004, the Board received an update from the Sheriff's Department about jail overcrowding problems and the potential lease or purchase of Maranatha and City Jails. The Board directed the Sheriff's Department and the County Administrative Office to report further on November 2, 2004. App., Ex. 92.

6. Oct. 27, 2004: RESD's M/Rendulich Meets with Sheriff's Staff

On or about October 27, 2004, RESD's M/Rendulich began making entries in an RESD diary of RESD's work on the Maranatha Jail project. App., Ex. 78, p. 1. On that day, M/Rendulich wrote in the RESD diary: "Met w/ Sheriff's Dept (Beemer, Cates,

Wellot, Jenkins, Boldt) & CAO (Rozko) to discuss prison options in Adelanto – 2 choices – Maranatha & City of Adelanto[.] Sheriff prefers city due to stronger construction.” *Id.*, Ex. 78, p. 1; [REDACTED]

According to [REDACTED] strongly preferred the City Jail: “My opinion was, though we had more potential beds at Maranatha, the City facility would be much better because it was better cared for.” [REDACTED]. The condition of the Maranatha Jail concerned [REDACTED] about leasing the jail from Maranatha:

And my understanding of how the contract was going to work, we had the option to purchase it for the first nine months or for a year after that we were stuck with a lease until the seventh year. For that interim period, we’re stuck because I guarantee you he’s going to be the wors[t] landlord you can imagine just based on how he took care of the facility before. He didn’t put any money into maintenance, repair, and fixing it up. . . . That’s my whole sense of how that whole lease period was going to work. We’re going to end up dumping tons of money into it. First off, we’re going to have to dump tons of money into it just to open it. We did pretty good, but it’s not up to our standards. [REDACTED]

7. Oct. 27, 2004: Clayton Group Sends Mold Report to County

By letter dated October 27, 2004, D/Jenkins of the Sheriff’s Department received from Clayton Group its “Phase I Building Fungal Evaluation for the Maranatha Correctional Facility etc.” App., Ex. 77. The report was based on John McGarrigle’s inspection of the Maranatha Jail on October 18, 2004 and further analysis and review by Clayton Group’s David S. Martinez, CIH, Senior Industrial Hygienist, Occupational Health Safety. *Id.*, pp. 1-2, 7.

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Clayton Group's report stated that there was mold at the Maranatha Jail that could be injurious to health and that needed to be remediated. App., Ex. 77, pp. 4-5. Molds identified included *Stachybotrys*, a mold that "generally indicates long-term water intrusion." *Id.*, p. 3. With reference to "visibly moldy gypsum board materials" at the Maranatha Jail, Clayton Group's report stated:

. . . . It is currently international consensus that the occurrence of atypical visible mold growth in buildings should be remediated, due to health and material integrity effects (e.g., United States Environmental Protection Agency, Health and Welfare Canada, World Health Organization).
[App., Ex. 77, p. 4.]

In its report, Clayton Group recommended: (a) "Determine the source of water intrusion in the water-impacted materials and repair the sources of leaks allowing water to impact building materials" (App., Ex. 77, p. 4); (b) "Retain a qualified, independent, microbial remediation contractor to remove water-impacted and visibly moldy building materials in the living quarters and kitchen" (*id.*); (c) "Perform the remediation activities identified in this report under the attached written specifications etc." (*id.*); and (d) "Retain an environmental consultant to perform a thorough post-remedial final visual inspection of work areas and post-remediation air sampling" (*id.*). The report did not include an estimate of the time, cost, or feasibility of performing a complete remediation.

Clayton Group's report further recommended that numerous activities "be performed by the microbial remediation contractor." App., Ex. 77, p. 6. The recommended work included: "Conduct a destructive inspection for all areas where there are indications of water intrusion and the potential for suspect visible mold to be hidden inside of the wall cavity." *Id.* It does not appear that a microbial remediation contractor performed this recommended testing anytime through the Board's vote on the

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Lease/Option and the \$28 million purchase option; nor does it appear that the Board was advised to delay those votes until such additional work was performed.

Clayton Group's report warned: "The County of San Bernardino may wish to seek legal advice in connection with the potential legal liabilities which could be associated with the water damage and visibly moldy building materials observed inside the Maranatha Correctional Facility." App., Ex. 77, pp. 5-6.

According to [REDACTED], upon reading the Clayton Group's mold report, "I understand some of it, but the implications of it I had no idea." [REDACTED]. [REDACTED] then went and talked "with our mechanical folks, if you will," to have them explain the meaning of the mold report. [REDACTED] stated [REDACTED] that "our mechanical folks" advised him that the mold condition might require extensive remediation, demolition, and construction work on the jail. [REDACTED]

According to CAO Uffer, "There was mold found in the kitchen, there were concerns there was mold in the cement, and that sent up a red flag for everything." 8/5/05 CAO Uffer Int., p. 24, ll. 2-8. CAO Uffer stated at his interview that the mold was one of the "things that scared the Sheriff's staff." *Id.* It appears that a copy of Clayton Group's report was received by Laurie Rozko ("L/Rozko"), Administrative Analyst in the County Administrative Office. App., Ex. 100, p. 2.

[REDACTED], RESD [REDACTED] stated at [REDACTED] interview: "Mr. Moreland said that they had fixed the mold in the kitchen area and if there was any that was still remaining, that it would come under his costs to remedy the situation and he would do that, so we went forward from there." [REDACTED]

[REDACTED] Clayton Group's report reflected, however, that Clayton Group had found "suspect visible fungal growth" in the kitchen area of the Maranatha Jail. App., Ex. 77, p. 2.

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8. App. Oct. 28-Dec. 20, 2004: D/Jenkins Reduces Cost Estimates

According to [REDACTED], one event that led to the “real push” for the acquisition of the Maranatha Jail was the downward adjustment by the County of the estimated cost of repairing the Maranatha Jail. [REDACTED]

By memo dated October 19, 2004, D/Jenkins had estimated the cost of various repairs to the Maranatha Jail at more than \$5 million. App., Ex. 74. On October 28, 2004, however, D/Jenkins sent to Lt. Wellott a memo that substantially reduced the estimated cost of repairs needed to make the Maranatha Jail suitable for the County. Compare App., Ex. 74 with Ex. 81. D/Jenkins further revised his estimates on December 20, 2004 by making revisions to the October 28th memo. See *id.* In revising downward the estimated costs, D/Jenkins’ October 28th/Dec. 20th memo cautioned:

The following costs represent an estimation of expenses required for repair and upgrade of the Maranatha Facility prior to occupancy. These costs were adjusted to reflect only that work required if a lease of the property for a period of approximately five years is considered. No cost is included for any repair to the roof (which had numerous patches visible) [App., Ex. 81.]

The changed estimate for the cost of the kitchen renovation provides the most dramatic example of the rationale for the lowered estimates. In D/Jenkins’ October 19, 2004 memo, D/Jenkins estimated that cost at \$3 million. App., Ex. 74. In D/Jenkins’ October 28th/December 20th memo, he estimated the cost of kitchen renovation at \$2 million. *Id.* In making this downward revision of \$1 million for kitchen renovation, D/Jenkins explained that construction methods and materials could be used that are “better than existing but less expensive and shorter lived than those used with a purchase in mind.” *Id.*, Ex. 81, p. 1.

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Other downward adjustments in cost estimates made by D/Jenkins included not installing "anti-climb to the perimeter fencing" in order to save \$120,000. App., Ex. 81. Another downward adjustment included not removing the floor tiles in the dayrooms in order to save \$27,000. *Id.* In deleting that cost, D/Jenkins stated: "This will be dependent on the requirements in the mold final report (no mold found under tile). Tile not adhered well to concrete. Tile could easily be removed by inmates and used as weapons." *Id.*

According to [REDACTED] never prepared a revised estimate of the cost of repairs that should be made if the County were to buy, rather than lease, the Maranatha Jail.

[REDACTED] didn't prepare a revised estimate because "I wasn't asked to" and [REDACTED] believed it was "common knowledge" that [REDACTED] revised estimates were based on his assumption that the County would lease, not purchase, the jail. [REDACTED]

9. Oct. 28, 2004: M/Rendulich Sends L/Rozko Cost Comparisons

On October 28, 2004, M/Rendulich emailed to L/Rozko of the CAO's office summaries of relative costs of the Maranatha and City Jails. App., Ex. 82. M/Rendulich sent somewhat revised summaries on October 29th. *Id.*, Ex. 83.

RESD's summaries reflected that Maranatha sought annual rent of \$4.3 million (approximately \$360,000 per month), purportedly for a jail having 1,000 beds. App., Exs. 82-83. The Sheriff's Department knew that the Maranatha Jail would likely provide only 668 beds. *Id.*, Ex. 74 (D/Jenkins memo). In contrast, RESD's summaries of October 28-29th stated that Adelanto, although its position was somewhat vague, sought estimated annual rent of about \$2.5 million (approximately \$166,667 per month) for the City Jail, which had approximately 500 beds. App., Exs. 82, 83. The difference in the proposed rental costs of the Maranatha Jail and the City Jail estimated by RESD on October 29th is significant because the difference raises a question concerning whether the rent sought by Maranatha was fair market rent.

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Although Maranatha sought \$4.3 million annual rent (and approximately \$360,000 monthly rent) from the County, it appears that the CDC paid annual rent in 2004 of approximately \$2.85 million for the Maranatha Jail and \$2.77 million in 2003. App., Ex. 250, p. 130; see id., Ex. 134, p. 3; and Exs. 82-83.

Concerning the Maranatha Jail, RESD's summaries further stated: "Owners do not have awareness of any mold in facility and say kitchen is enormous and constructed to state of the art." App., Ex. 83. This point is relevant because Maranatha's denial that it knew of the visible mold at the Maranatha Jail raises doubt concerning Maranatha's credibility and its attitude towards performing remediation. See App., Exs. 77, 208-209.

RESD's summaries reflected that Adelanto contended that it could get out of its contract/lease with the CDC on 90 days' notice. App., Ex. 83, p. 2. This was only partly correct. Adelanto's lease did state that Adelanto could terminate the lease on 90 days' notice. App., Ex. 8, pp. 21-22. The lease also provided, however, that Adelanto needed "cause" to terminate. Id., p. 21, ¶ 20.b. The contract did not define "cause." See id.

10. Oct. 29, 2004: Maranatha Provides Flimsy Mold Report

On October 29, 2004, T/Moreland sent a fax to M/Rendulich that tried to reduce the County's concerns about the mold at the Maranatha Jail. App., Ex. 86. T/Moreland's environmental tester's report appeared to be far less professional and less detailed than the Clayton Group report commissioned by the County. Compare id., Ex. 77 (Clayton Group report) with Ex. 86; [REDACTED]

T/Moreland's tester's report did not reflect that the tester, Tim Utley of Inspect-It 1st, had any credentials. App., Ex. 86. Utley's report indicated that he was an independently owned franchisee of "Inspect-It 1st Franchising Corp." Id. [REDACTED] stated at [REDACTED] interview: "[T]his guy's credentials – all he had ever done was residential mold inspections and that kind of thing. The guy, the company I went to, I mean, they were into industrial heavy duty serious shit for environmental hazards and stuff like that for companies." [REDACTED]

Following October 29, 2004, including through the date of the signing of the Lease/Option and the exercise of the purchase option, there was no further assessment by Clayton Group (or a similarly credentialed environmental consultant) of the extent of the mold or the extent of repair work that would be required to remediate the mold condition.

11. **Approx. Oct. 29, 2004: CDC and Maranatha Sign Further MOU**

On or about October 24-29, 2004, the CDC and Maranatha signed an MOU extending the termination date of Maranatha's contract to November 30th. App., Ex. 87.

L. **November 2004: Granlund Markets Maranatha Jail to CAO Offer; County Decides City Jail is Unavailable; Adelanto Now Disputes This**

1. **Nov. 2, 2004: Sheriff's Staff Compares Maranatha & City Jails**

By November 2, 2004, the Sheriff's Department prepared a further comparison of the Maranatha and City Jails. App., Ex. 93. The comparison included projections reflecting that the City Jail would be less costly to the County than the Maranatha Jail.

The Sheriff's Department calculated that the first year net cost impact to the County of the Maranatha Jail would be \$17.4 million, assuming that 300 of the 668 inmates were federal inmates generating \$7.23 million in federal reimbursement to the County. App., Ex. 93, p. 6. By the fifth year, the net annual cost impact to the County of the Maranatha Jail would be \$18.9 million, assuming that 100 of the 668 inmates were federal inmates generating \$2.4 million in federal reimbursement to the County. *Id.*

In contrast, the Sheriff's Department calculated that the first year net cost impact to the County of the City Jail would be \$8.8 million, assuming that 250 of the 500 inmates were federal inmates generating \$6.02 million in federal reimbursement to the County. App., Ex. 93, p. 5. By the fifth year, the net annual cost impact to the County of the City Jail would be \$12 million, assuming that 100 of the 500 inmates were federal inmates generating \$2.4 million in federal reimbursement to the County. *Id.*

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2. Nov. 2004: Granlund Recommends Maranatha to CAO Uffer

Sometime in November 2004, CAO Uffer had a telephone call with Granlund about the Maranatha Jail. 8/5/05 CAO Uffer Int., p. 16, ll. 14-20. CAO Uffer's description of the call reflects that Granlund made a sales pitch to CAO Uffer.

In describing this conversation, CAO Uffer stated: "I think the conversation was, 'I understand you guys are looking at this jail. You know, pretty solid, nice facility. I've done work on the Prison Board. I know the facility, you know, not a bad deal for the County,' pretty generic conversation." 8/5/05 CAO Uffer Int., p. 16, l. 17 - p. 17, l. 2.

CAO Uffer's recollection of this conversation with Granlund contradicts Granlund's assertion that "There was never any kind of a recommendation, a pitch, a why-don't-you. You know, none of that. There was no representation whatsoever of Moreland to the County." 7/20/05 Granlund Int., p. 73, l. 20 - p. 74, l. 3.

CAO Uffer's recollection of Granlund's sales pitch did not include any disclosures by Granlund of pejorative information known to Granlund about Maranatha and the Maranatha Jail. For example, others who visited the moldy, substandard Maranatha Jail did not regard it as a "pretty solid, nice facility." In addition, Granlund knew that the CDC had made serious allegations of misconduct against Maranatha that, if true, would impact on whether Maranatha could be trusted to perform its obligations to the County; even if the CDC's allegations were untrue, they had not been resolved or adjudicated. As stated above, Maranatha disputes the CDC's allegations.

CAO Uffer stated in his interview that he spoke to Foster shortly after Granlund's November 2004 telephone call. 8/5/05 CAO Uffer Int., p. 18, l. 17 - p. 19, l. 21. According to CAO Uffer, he told Foster: "Hey, I got this call from Granlund on the jail. Do you have any idea what that was about?" *Id.*, p. 19, ll. 6-9. CAO Uffer stated that Foster became angry and said: "You know you shouldn't have been talking to him." *Id.*, p. 19, ll. 10-13.

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On that point, Foster agrees with CAO Uffer. Foster stated at his interview:

Again, I believe Mr. Granlund was representing those people [Maranatha]. I know that Mark Uffer and he talked frequently about this jail. I advised Mark it was totally inappropriate for him to be negotiating with a County lobbyist to buy a jail that was outdated and was obsolete. [7/19/05 Foster Int., p. 22, ll. 10-14.]

3. Nov. 15, 2004: RESD Learns of Adelanto-CDC Contract Issues

By email dated November 15, 2004, L/Rozko requested RESD's J/Miller to provide information about the availability of the City Jail. App., Ex. 95. L/Rozko wrote: "What's the latest on the Adelanto contract? Are you planning to give the sheriff's office a written legal opinion, or coordinate a conversation with the city attorney?" Id. On the same day, RESD's J/Miller replied by email:

Laurie: Dave Slaughter, Marilee, and myself had a phone discussion with Rex [Hinesley] this morning concerning the Adelanto Jail Facility and all four of us came up with the same conclusion. It will be very difficult for Adelanto to get out of their agreement with the State and it will take a long time for the State to structure a deal where they will leave and relocate their prisoners to another facility. I've contacted the City Manager for Adelanto and ask[ed] him to have the City Attorney provide both Rex and me with an opinion on how they can terminate their agreement with the State. He said he would try to get something to us in the next couple of days. Because of the timing involved, we may want to focus our energies on Maranatha in order that we secure some sort of negotiation position before the owner decides to enter into another contract with the State. Dave has suggested

purchase price; and (c) each rent payment by the County would be applied as follows: (i) 90% to the unpaid principal portion of the \$28 million purchase price and (ii) 10% to the interest accruing on the unpaid principal balance of the \$28 million purchase price. App., Ex. 106. This point is relevant because it cuts against the argument that the Board did not need an appraisal to approve the “lease,” rather than purchase, of the Maranatha Jail. D/Slaughter’s internal notes reflect that the “lease” part of the Lease/Option involved making installment payments on the purchase price.

5. Nov. 17, 2004: M/Rendulich Writes re Status of City Jail

On or about November 17, 2004, M/Rendulich sent an email to D/Slaughter and RESD’s J/Miller about the availability of the City Jail. In this email, M/Rendulich stated:

I spoke with Bill Aylward (City Mgr) about Adelanto. The City Attorney said she would defend them if they wanted out of the lease for “just cause,” but she is not going to write a legal opinion on this as she does not think there is much more to say other than the City has to find suitable cause to terminate the lease. Bill has a call into the lobbyist in Sac about the manner in approaching ending the lease, but has not received word back yet.

As for the clause where it says the State can take over the prison, Bill interprets that to mean the State would do that as a last resort if the City can’t find someone to take over the lease payments – he does not think the State would do this otherwise.

If Bill hears anything from the lobbyist, he will pass the info on to us. [App., Ex. 104.]

Two days later, in an email to L/Rozko of the CAO’s office, RESD’s J/Miller stated that M/Rendulich’s November 17th email “helped to solidify our direction of negotiating with the Maranatha owner because of timing issues.” App., Ex. 108.

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It appears that Granlund discussed with Sheriff Penrod the subject of the City Jail's possible unavailability. Granlund stated at his interview that he was told at some point by T/Moreland that the CDC would not let Adelanto out of its contract with the CDC. 7/20/05 Granlund Int., p. 60, ll. 10-25. Granlund further stated at his interview that he discussed with Sheriff Penrod the fact that the CDC would not let Adelanto stop housing approximately 500 State inmates. *Id.*, p. 60, l. 19 - p. 61, l. 9. According to Granlund, Sheriff Penrod told Granlund: "Well, I guess my deal's falling apart." *Id.*

According to CAO Uffer, County Counsel looked at the lease between the CDC and Adelanto "and identified they didn't think the City could get out of their lease. At one point, they told us that the City had re-upped with the State so that facility was off the market." 8/5/05 CAO Uffer Int., p. 12, ll. 10-13. D/Slaughter recalls that the CDC had said that it would not let Adelanto terminate its contract. 7/26/05 D/Slaughter Int., p. 12, l. 23 - p. 13, l. 1; p. 29, ll. 10-13. Similarly, Capt. R/Beemer recalls that City Jail was "no longer an option" for the County after it determined that Adelanto could not get out of its multi-year contract with the CDC. 8/11/05 R/Beemer Int., p. 8, ll. 8-19.

Adelanto representatives have a different view. Adelanto City Manager W/Aylward stated at his interview that the County never told him that it was willing to pay \$28 million for a jail. 7/28/05 W/Aylward Int., p. 13, ll. 7-15. W/Aylward stated that: "As finance director [of Adelanto], I could have justified accepting that much money." *Id.*, p. 13, ll. 12-19. He further stated: "I, as finance director, would have been inclined to accept a lower offer or justify a lower offer." *Id.*, p. 15, ll. 9-16. W/Aylward stated that he believed that Adelanto's lobbyist, Rod Blonien ("R/Blonien"), could have negotiated Adelanto out of its contract with CDC. *Id.*, p. 14, ll. 15-22.

R/Blonien, a lawyer-lobbyist who represented Adelanto in its dealings with the CDC, disagrees that Adelanto lacked cause to terminate its lease. In 1993, in Sacramento Superior Court Case No. 533586, Adelanto had successfully sued the CDC for declaratory relief that the CDC had failed to comply with its duty to negotiate annual

adjustments to the annual rent payable to Adelanto. App., Ex. 9; 7/29/05 R/Blonien Int., p. 10, l. 12 - p. 14, l. 17. This point is discussed further in connection with the events that occurred on or about December 6, 2004.

The events of November 15-17, 2004 (and, later, December 6, 2004) reflect:

(a) Adelanto, which was proposing to charge less rent for a better-condition facility than Maranatha's, never told the County that the City Jail was unavailable; (b) Adelanto, in fact, told the County that Adelanto believed its jail was available; and (c) the County decided that Adelanto's assurances were unsatisfactory based on the failure of Adelanto's City Attorney to provide written assurances to the County that Adelanto had cause to terminate its contract with the CDC. Later events reflect that, at the time County staff decided to focus exclusively on the Maranatha Jail, RESD staff sought to get an appraisal of Maranatha in order to avoid making a disadvantageous deal with Maranatha..

6. **Nov. 18-19, 2004: RESD States Sheriff & Maranatha Jail Will Not Be Ready for 8-9 Months & That an Appraisal is Needed**

By email dated November 17, 2004, M/Rendulich notified D/Slaughter, Lt. Wellott, and others that an appraisal of the Maranatha Jail would not be completed sooner than two to four months. App., Ex. 105.

According to RESD's [REDACTED], in or about November 2004, [REDACTED] went to the Maranatha Jail with D/Slaughter and M/Rendulich and met there with T/Moreland. At the meeting, T/Moreland was told that the County would have to do an appraisal. [REDACTED]

[REDACTED] understood that an appraisal was needed by reason of the large dollar amount of the transaction. [REDACTED] stated at his interview: "We couldn't do it without having an appraisal." [REDACTED]

By email dated November 19, 2004, D/Slaughter notified D/Arabatizis, G/Newcombe, J/Miller, and B/Cates, that D/Slaughter believed that: (a) the Sheriff would require eight to nine months to be ready to use the Maranatha Jail and (b) the County should obtain an appraisal of the Maranatha Jail. App., Ex. 106. D/Slaughter wrote:

Elements known or believed to be true

* * * *

3. *The Sheriff will require approximately eight to nine months to graduate a class from the Sheriff's academy in order to staff the facility.*
4. *The same eight to nine months will be necessary for the owner to take care of certain deferred maintenance items and to construct whatever improvements are necessary to meet the needs of the Sheriff for the type of prisoners they house which are different from the type of inmate there now.*

* * * *

Unknown elements requiring additional analysis and discussion

1. *Value (price and monthly rent) need to be confirmed by an appraisal (estimated to require 8 weeks). . . .*

[App., Ex. 106 (bolding in original text; italics added).]

Under the heading "Deal points discussed (additional discussion, analysis required or likely)," D/Slaughter further wrote in his memo about applying the County's rent payments as installments on the principal amount of the purchase price of the Maranatha Jail: (a) "90% of the monthly rent (\$310,000 x 90% = \$279,000) applied as monthly payment of principal and interest"; (b) interest rate of 7%"; and (c) "the purchase price would decline over time as the \$28,000,000 is 'amortized' through the application of 90% of the monthly payments." App., Ex. 106, pp. 1-2. D/Slaughter conveyed this information to the CAO's office. Id., p. 1.

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7. **Nov. 22, 2004: RESD Completes RFP for Appraisal of Jail**

On or about November 22, 2004, M/Rendulich completed an RFP for qualified prison appraisers. App., Ex. 78. The RFP requested an “as is” appraisal of the Maranatha Jail, not a “prospective value only” appraisal. App., Ex. 109, p. 2. The RFP stated that one of the purposes of the appraisal was to “[p]rovide a market rent” for the Maranatha Jail. Id., Ex. 109, p. 2. On or about November 23rd, the County sent the RFP to 11 appraisal firms. Id., Exs. 78, 109.

M. **December 2004: Adelanto Meets with CDC; Maranatha Gets Lengthy Extension from CDC; Maranatha & CAO Offer Pressure RESD Not to Wait for Appraisal; Granlund Uses Coroner B/McCormick as Agent**

1. **Dec. 1, 2004: D/Slaughter Sends Email to L/Rozko re Appraisal**

By email dated December 1, 2004, D/Slaughter forwarded to L/Rozko a copy of D/Slaughter’s November 19, 2004 email, which identified the need for an appraisal and the delays involved in conducting the appraisal, training staff, and repairing the Maranatha Jail. App., Ex. 114.

2. **Approx. Dec. 6, 2004: Adelanto Lobbyist Meets with CDC**

On November 18, 2004, M/Rendulich noted in the RESD diary that Adelanto’s lobbyist planned to meet with the CDC on or after December 6, 2004. App., Ex. 78, p. 1. It appears that a meeting occurred between Kevin Carruth (“K/Carruth”), Undersecretary of the Youth and Adult Corrections Agency, and R/Blonien, a lawyer-lobbyist for Adelanto. 7/29/05 R/Blonien Int., p. 8, l. 7 - p. 10, l. 6.

On or about December 6, 2004, at the meeting with K/Carruth, R/Blonien asked whether the CDC would let Adelanto terminate its contract with the CDC or, in the alternative, commit to extend Adelanto’s contract, which would expire in 2009 or 2010. 7/29/05 R/Blonien Int., p. 6, l. 19 - p. 10, l. 6. According to R/Blonien, K/Carruth neither agreed to extend Adelanto’s contract nor to let Adelanto out of its contract. Id.

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According to R/Blonien, by reason of violations by the CDC of the cost-adjustment provisions of its contract with Adelanto, Adelanto could have terminated its contract. R/Blonien stated at his interview that, years earlier, Adelanto had prevailed in obtaining a court ruling that the CDC had violated the cost adjustment provisions of its contract with Adelanato. 7/29/05 R/Blonien Int., p. 10, l. 7 - p. 12, l. 16. It does appear that Adelanto previously sued the CDC and obtained declaratory relief that the CDC had violated its duty to negotiate in good faith the annual reimbursement rate payable to Adelanto by the CDC. App., Ex. 9. R/Blonien further stated at his interview:

QUESTION: Did the City ever tell you that the County of San Bernardino was willing to pay approximately \$28 million for the City's jail facility?

ANSWER [R/BLONIEN]: No, they didn't.

QUESTION: Would that have mattered to you?

ANSWER: I think it very definitely would have mattered to me.

It cost the City about \$1,400,000 [sic; probably should be \$11 or \$14 million] to build that facility. And if you look at the [debt] service reserves and some of the preopening costs, I think the City sold about \$14 million in bonds for the facility.

And if you take the [\$]11 million construction cost, that would have been \$17 million – I should perhaps – I shouldn't say windfall, but would have been a difference of – significant difference to the City, 15 –, \$17 million. And it's a very small city and would have been a major benefit to their budget.

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And so I think if I had known what the number was, we would have gone back to Corrections and talked about their breach of contract and asked to be let out of the contract, or we would have filed litigation seeking to be relieved of our responsibilities for their failure to meet the payment requirements.

QUESTION: But wouldn't the litigation have taken years to get resolved?

ANSWER: I think you could have gone in and filed the declaratory relief action and probably could have gotten relief pretty darn soon, particularly having in hand the previous action that had been filed. And the court had determined what the responsibility of the parties were. [7/29/05 R/Blonien Int., p. 13, l. 12 - p. 14, l. 17.]

According to R/Blonien, T/Moreland previously made allegations against R/Blonien and his wife concerning R/Blonien's role as a consultant to another prison company, Wackenhut. R/Blonien stated at his interview that T/Moreland's allegations resulted in an investigation of R/Blonien by the CDC and the U.S. Dept. of Justice; R/Blonien further asserted: "[T]he allegations made by Mr. Moreland were found to be baseless." 7/29/05 R/Blonien Int., p. 24, ll. 5-24.

3. Dec. 8-9, 2004: RESD Needs 60 Days to Get an Appraisal

On December 8, 2004, D/Slaughter told D/Jenkins of the Sheriff's Department that the tasks "necessary to complete this lease" included obtaining an appraisal and negotiating a rent and purchase value "guided" by the appraisal. App., Ex. 118, p. 3.

By email dated December 8, 2004, The Heath Group ("Heath Group"), a San Diego appraisal firm with experience appraising correctional facilities, wrote to

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M/Rendulich: "Our fee for this engagement would be \$17,500, with timing to complete estimated at 60 working days from the date of your engagement." App., Ex. 116.

The next day, G/Newcombe sent an email to D/Slaughter and M/Rendulich. G/Newcombe stated: "I'd get the appraiser started now." App., Ex. 118. On the same day, D/Slaughter replied: "We'll make a selection not later than tomorrow, get a commitment as to the finish date and let everyone know when we expect the report." Id.

4. Dec. 14, 2004: Board Authorizes Obtaining an Appraisal

On December 14, 2004, the Board met to consider an agenda item presented by Sheriff Penrod. The "Recommendations" in the agenda item stated:

RECOMMENDATIONS:

1. Receive follow-up report regarding the availability of two correctional facilities in Adelanto.
2. Direct staff to pursue negotiations with Moreland Family, LLC, owner of the Maranatha Community Correctional Facility.
3. Approve the use of up to \$25,000 for appraisal costs from the Justice Facilities Reserve Fund, and increase appropriations and revenue as detailed in the Financial Impact section below. (Four votes required.) [App., Ex. 122.]

The "Background Information" section of Board's agenda item reflected that the Board at that time wanted an appraisal before, not after, the Board decided whether or not to approve the Lease/Option. The agenda item stated that the Board's approval of Recommendation No. 2, quoted above, would "direct staff to pursue negotiations and return to the Board with pertinent fiscal information as soon as possible following an appraisal of the facility." App., Ex. 122 (emphasis added); see id., Ex. 184, pp. 1-2.

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The report and recommendations in the agenda item told the Board that the City Jail was no longer an option due to contractual issues with the State of California. App., Ex. 184, pp. 1-2. The agenda item did not tell the Board that Adelanto contended that it would be able to surmount those contractual issues. *Id.* Following the presentation, the Board voted to approve the Recommendations in the agenda item.

At the same December 14th Board meeting, the Board also voted 5-0 to extend the SBC-Platinum Contract for an additional year, to December 31, 2005. App., Ex. 124.

5. Dec. 15, 2004: RESD Hires Heath Group to do Appraisal

On or about December 15, 2004, RESD decided to hire Heath Group to appraise the Maranatha Jail within 60 days. App., Exs. 78, 126. In addition, also on December 15th, 2004, RESD's Louis Schnepf notified Heath Group: "We respectfully request completion of the assignment earlier than 60 days if at all possible." *Id.*, Exs. 128-29.

According to CAO Uffer, the issue of appraising the Maranatha Jail was left to RESD. 8/5/05 CAO Uffer Int., p. 11, ll. 6-12. By reason of the Board's December 14th vote, the RESD had reason to believe that it would have time to get an appraisal before a decision would be made on the Lease/Option. As described below, the time frame to get an appraisal abruptly changed during December 17-20, 2004.

6. Dec. 7-16, 2004: CDC Agrees to Extend Termination Date

Between December 7-15, 2004, the CDC and Maranatha signed an MOU reciting: (a) they met in November 2004 to discuss extending the termination date for Maranatha's contract with the CDC; (b) the new termination date was January 31, 2005; and (c) if the parties did not reach a resolution of their dispute by January 1, 2005, then Maranatha would continue to be paid through the extended termination date. App., Ex. 127.

On December 16, 2004, on or about the day after the CDC signed the MOU extending the termination date to January 31, 2005, Maranatha and CDC representatives had a further meeting. App., Ex. 198. It appears that, at that meeting, the CDC orally agreed to extend Maranatha's termination date to June 30, 2005, more than six months in

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the future. *Id.* The existence of that oral agreement is confirmed by a written MOU that Maranatha and the CDC signed during January 14-16, 2005, which recites that such an oral agreement had been made on December 16th. App., Ex. 198. The written MOU between Maranatha and the CDC stated:

The above parties met on November 17, 2004, and again on December 16, 2004 to further discuss the issues surrounding the contract and the continuation or termination thereof. At these meetings, the parties agreed to continue their discussions and to extend the contract termination date from the previously extended dates of November 30, 2004, and January 31, 2005, to June 30, 2005. [App., Ex. 198.]

It does not appear that Granlund or Maranatha told the County during December 16, 2004-January 11, 2005 that the CDC had agreed, or had indicated any willingness, to extend the termination date through June 2005.

It may be argued that the CDC's extension of the termination date did not occur until January 14-16, 2005, when the above-quoted written MOU was signed. Granlund recalled at his interview that the CDC gave an extension "from December 15th to January or February 1st; then from February 1st or thereabouts, and I'd have to go pull all my Maranatha records." 7/20/05 Granlund Int., p. 61, l. 23 - p. 62, l. 3. The written MOU, however, recites that the CDC orally agreed on December 16, 2004 to extend the termination date to June 30, 2005. It is questionable that the CDC and Maranatha signed an MOU containing false recitals about the December 16, 2004 meeting.

Further, even assuming that the recitals in the MOU are inaccurate, it appears that there was a distinct chance that the CDC would extend the deadline. First, according to a memo authored by RESD Director D/Slaughter, he understood that the CDC had no alternative place to put the approximately 500 inmates that were still at the Maranatha Jail. App., Ex. 106, p. 2 ("[T]here appears to be no readily available alternative location

for the State”). Second, according to Granlund, the CDC at some point told Maranatha that it could renew its contract with the CDC, even without resolving the dispute over inmate telephone revenues: “[W]hat had happened is, CDC was now saying, ‘Okay. We’ll renew your contract, and we’ll go ahead and withdraw this whole cancellation of your contract termination notice. We’ll work out our telephone revenue stuff later.’” 7/20/05 Granlund Int., p. 59, ll. 20-25.

Moreover, the argument that the CDC was truly on the verge of giving Maranatha no further extension cuts multiple ways. For example, if Maranatha’s relationship with the CDC was doomed, then the County might have had substantial bargaining leverage with Maranatha, provided that Granlund disclosed this leverage to the County. If Maranatha was about to lose its contract with the CDC, then Maranatha would have an empty jail and no revenue, unless it cut a deal with the County.

7. Dec. 17, 2004: “Deal” – CAO Uffer Calls D/Slaughter

In notes dated December 17, 2004, D/Slaughter analyzed the rent payments under the Lease/Option as installment payments on a \$40 million purchase price, with each rent payment being 90% applied to principal and the balance to interest. App., Ex. 131.

D/Slaughter’s notes of that day also stated: (a) D/Slaughter spoke with “Mark U.,” who told D/Slaughter: (a) “deal”; and (b) “need Risk Mgmt to review & sign off ASAP (tell Elizabeth Sanchez to direct them to do whatever is necessary)”. App., Ex. 131, p. 2.

On the same day, [REDACTED]
[REDACTED] –
[REDACTED]
[REDACTED]
[REDACTED],
[REDACTED]
[REDACTED]
[REDACTED]

8. Dec. 20, 2004: M/Rendulich Is Told Not to Wait for an Appraisal

On December 20, 2004, M/Rendulich wrote in the RESD diary: "Moreland wants 1/4 date for State negotiations. Got on agenda for 1/4 w/ board item draft. Won't wait for appraisal to verify rent or purchase price." App., Ex. 78, pp. 2-3 (emphasis added).

[REDACTED] December 20th entry [REDACTED] meant "the appraisal was never going to be in on time, meaning January 4." [REDACTED] stated that the Lease/Option agenda item "was pushed to get on the board January 4th [agenda]." [REDACTED] explained: "And the push was because Mr. Moreland had to do negotiations with the State of California. So he was – he had his own time frame, and he needed to know if he had to deal with us or not." [REDACTED]

According to CAO Uffer, "we had to push a little bit" to get the Lease/Option to the Board to satisfy T/Moreland, notwithstanding concerns about mold. CAO Uffer stated at his interview:

. . . . I believe we found some mold during one of the inspections that the Sheriff's staff did. When I think – I looked back, those were some of the things that scared the Sheriff's staff off. There was mold found in the kitchen, there were concerns there was mold in the cement, and that sent up a red flag for everything. I remember calling him [T/Moreland] and told him, "We need a mold inspection." There were a couple of calls about when this was going to go before the Board, when was the time frame. I believe that it was, you know, "What date is this going to the Board? Is it really going to go? Is the County serious about this?" I told him, "Terry, this is the County. County moves notoriously slow. This County has a history of not moving quick now,

especially in real estate transactions.” He did express to me some expediency where he had to make a decision, lease it[,] sell it or re-up with the State, so we had to push it a little bit to meet those needs because we didn’t want to lose the deal [8/5/05 CAO Offer Int., p. 24, ll. 2-21.]

According to D/Slaughter, “[T]hey [i.e., Maranatha] needed an answer now and he [i.e., T/Moreland] was reluctant to let that opportunity go while he waited for us to complete our appraisal. And he asked if we somehow could initiate taking this to the Board and getting it approved sooner.” 7/26/05 D/Slaughter Int., p. 14, ll. 14-25. D/Slaughter stated at his interview: “The prison was a needed facility, so we determined we would take the transaction to the Board early.” *Id.*, p. 15, ll. 1-3.

9. Dec. 22, 2004: M/Rendulich Notes Possible Delay to 1/11/05

On Wednesday, December 22, 2004, still proceeding without an appraisal, M/Rendulich emailed a draft contract to Maranatha’s T/Moreland. App., Ex. 78, p. 2; [REDACTED]. M/Rendulich’s email stated that the County would be closed for business until Monday, December 27th. App., Ex. 139.

On the same day, December 22nd, M/Rendulich noted in the RESD diary that the Maranatha agenda item might be postponed from January 4, 2005 until January 11, 2005 “since Sheriff not here.” App., Ex. 78, p. 2.

10. Dec. 24-27, 2004: Heath & RESD Seek to Arrange Inspection

By letter dated December 24, 2004, i.e., the day before Christmas, Thomas Heath (“T/Heath”) of Heath Group wrote to M/Rendulich asking her to arrange for an inspection the Maranatha Jail “during the week of the 3rd or 10th of January 2005.” App., Ex. 142.

By email dated December 27, 2004, M/Rendulich notified T/Moreland that the County had retained Heath Group to appraise the Maranatha Jail. App., Ex. 148. M/Rendulich requested that T/Moreland arrange dates for the appraisers to inspect the Maranatha Jail sometime during the weeks beginning January 3 or January 10. *Id.*

11. Dec. 27, 2004: Moreland & Maranatha File Claim against CDC

By late December 2004, despite having apparently achieved an oral agreement to extend its termination date until June 30, 2005, Maranatha had to make a decision that could further undermine Maranatha's relationship with the CDC.

Under Govt. Code § 911.2, a person who wants to sue a public entity on a tort claim ordinarily must file a government claim within six months of when the claim arose. The CDC had sent its notice of termination letter, accusing Maranatha of concealment and other misconduct, on June 29, 2004. Accordingly, Maranatha had a deadline of December 28-29, 2004 to file a claim against the CDC.

On December 27, 2004, T/Moreland and Maranatha filed a government claim against the CDC and others for \$10+ million in damages for defamation and related wrongs arising from the CDC's June 29, 2004 notice of termination. App., Ex. 145. Maranatha's claim named as defendants: (a) the CDC, (b) the State of California, (c) CDC Director Jeanne Woodford, and (d) two other CDC employees named Margo Bach and Greg Harding. *Id.* Although Granlund undoubtedly knew of this claim by his client against the CDC, it does not appear that he told the County anything about it.

12. Dec. 28, 2004: M/Rendulich Says She Cannot Justify the Rent

According to handwritten notes of [REDACTED] n

[REDACTED]
[REDACTED] ha
[REDACTED]

On December 28, 2004, M/Rendulich discussed with R/Hinesley his recent revisions that made the County responsible to reimburse Maranatha for taxes and insurance. App., Ex. 78; [REDACTED]

The December 28th handwritten notes of M/Rendulich state:

Triple net clause added County reimburse taxes &
insurance – not in rental rate of \$316,181 per Moreland. [REDACTED]

[REDACTED] – I can't [REDACTED] not without the appraisal (& they won't wait for it due to Moreland's negotiations with State on the line). [App., Ex. 78, p. 2.]

According to [REDACTED] does not recall specifically discussing with [REDACTED] whether [REDACTED] was comfortable with the rent amount specified in the Lease/Option. [REDACTED] added, though, "any time that we're doing a lease, [REDACTED] that we have to be within a window of fair market value [REDACTED] it's just routine, and [REDACTED] would have said something to her along that line." [REDACTED]

It may be argued that the County customarily enters into leases without an appraisal and that the County does not mandate appraisals in connection with lease transactions. This argument overlooks that the County's leases frequently involve realty of the kinds familiar to RESD staff, who include appraisers. [REDACTED] (stating that "most of the leases we do are office leases or space only in an office or an entire building"; and "the agents seem know the rough percentage, at least the rough area footage for all the variables that go into that, so we rarely do an appraisal exactly"). It does not appear that RESD purported to have, or believed it had, expertise in appraising a jail facility. Indeed, [REDACTED] had previously appraised realty for the County but believed that [REDACTED] needed an appraisal from someone with particularized expertise in appraising jail facilities. [REDACTED]

I am an appraiser, but I do not do prisons. We feed that appraisal out. I wish they would have waited. As an appraiser, I believe in the legitimacy of that work, most people don't, but I recognize that. And I know Dave

Slaughter believed that too. [REDACTED]
[REDACTED]

It may be further argued that a jail is too unique to value. This argument overlooks that: (a) the County employed Heath Group precisely because it had the ability to value a jail facility; (b) crediting this argument leads to the absurd result of justifying payment of an unlimited amount for a jail; (c) there were two comparable facilities that raised substantial questions about the rental value sought by Maranatha: (1) the Maranatha Jail itself, for which the CDC paid \$1 million less per year than the rent sought by Maranatha from the County, and (2) the City Jail, for which Adelanto requested about \$1.5 million less rent per year than Maranatha sought from the County.

13. Dec. 28, 2004: Granlund Seeks Information through Coroner

According to Granlund, "I've never dealt with, made a phone call, sent an email, had a letter, had a personal meeting, or any contact with any individual at Real Estate Services, period." 7/20/05 Granlund Int., p. 63, ll. 16-19. This assertion by Granlund appears to be misleading because it omits Granlund's indirect efforts to obtain from RESD the non-public version of the Lease/Option that R/Hinesley had revised on December 27, 2004. Granlund sought to obtain that draft by approaching RESD through County Coroner B/McCormick.

On December 28th, M/Rendulich wrote in the RESD diary:

Finalized board item & contract. Brian McCormick's office (Cheryl) call, requested copy of contract for Cheryl to pick up, give to Lonnie Granlund who will give to Sheriff (huh?) Told contract not final. Told Dave, called Cpn Beemer who says McCormick & Granlund are friends - Beemer says have them call him. Cheryl called again for McCormick, told Moreland was client of Granlunds & needed contract to get signatures in Sacramento. Asked in what

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capacity they are clients – told affiliated. (Huh?) Told Cheryl contract was not final & do not release to private citizens (no board approval yet) & we are working hand-hand with Sheriff – will take care of it. Don't need sig in Sacramento – have made arrangements for Moreland's signature. Don't need B. Granlund ex wife to take contract to Sheriff or Sacramento. Sent final contract w/ pagination problems to Moreland & Tim Thompson & faxed Exhibit A (site plan, legal descript). About 4:30 p.m. Tim Thompson called & said option to purchase was wrong – County not to get option for 1st 6 yrs. Told him I had never heard that. Said it was discussed. Asked w/who – told Postmus. Word not sent to us. Told Tim had to review with Dave & Rex[.] Called Dave (at Taj) & Rex. Dave said never heard of option beginning in 6th year. Sent final contract to Tim & Moreland at 4:58 pm (corrected pagination). Tim was to have Moreland call me with an explanation of change in option date – didn't call by 5 pm. [App., Ex. 78, pp. 2-3.]

[REDACTED]. Further, interviews of other witnesses provide further support for the information reflected in those notes.

According to Sheriff's Department [REDACTED] received a telephonic request from Cheryl Straka (or "Sheryl" Straka), Coroner B/McCormick's secretary, for a copy of the Maranatha Lease sometime before the January 2005 Board meeting on the Lease Option.

[REDACTED]

ANSWER [REDACTED]: Sheryl called, she said that Mr. McCormick had asked her to call and get a copy of the

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lease for the Maranatha facility. That – my recollection is that it was to give to Mrs. Granlund and somehow to get a copy to the Sheriff in Sacramento, is my recollection. And at the time I thought that was peculiar. But anyway, I believe I told her I would check and get back to her and I referred to Chief, – well, Captain Beemer at the time because I wasn't comfortable releasing anything to the Coroner's office. And I didn't have it to release anyways. I would have had to call Real Estate Services because I certainly didn't have the lease document in my hands.

QUESTION: Why did you think the request was peculiar?

ANSWER: Well, it seemed to me the end recipient was going to be the Sheriff, and if he wanted a copy he could contact staff and get a copy. It seemed like an odd route to get it to the Sheriff, if that was truly the intended recipient, so I referred the matter to my commander.

QUESTION: And what did your commander, if anything, say to you when you referred the matter to him?

ANSWER: Um, my recollection is that he said that we would not release the document. "If the Sheriff needs a copy, we can contact the Sheriff and get him a copy. Otherwise, they can wait for the document to become public record."

[REDACTED]

Capt. R/Beemer confirmed at his interview that, in late 2004, he was told by W/Britt that Cheryl Straka requested a copy of the Maranatha Lease:

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QUESTION: Did anyone from his [i.e., Coroner McCormick's] office ever contact you about the Maranatha jail facility?

ANSWER [R/BEEMER]: Not directly. We got a call from Sheryl Straka, who is Brian's secretary and still works for our office, and she ended up contacting Wendy Britt, who worked for me. She was our Administrative Manager in our Bureau of Administration. She runs all contract administration with all our cities, anybody we contact. She apparently contacted Wendy and wanted to get a copy of the lease agreement that was being discussed. Now, my recollection is, at the time, that I thought that that was kind of an odd request because I couldn't imagine why Sheryl – and because Sheryl was the personal secretary of Brian McCormick, why Brian would be involved. And I essentially said, "They don't have a need for the contract," and we didn't supply it. [8/11/05 R/Beemer Int., p. 11, l. 24 - p. 12, l. 14.]

According to former Coroner B/McCormick, Granlund asked B/McCormick to help obtain a document from RESD. 8/11/05 B/McCormick Int., p. 7, l. 19 - p. 9, l. 9. B/McCormick insisted, however, that Granlund did not ask for McCormick's help until February or March 2005, when McCormick was no longer a public official. *Id.*, p. 7, ll. 3-12. Implausibly, B/McCormick stated that, in response to Granlund's request, B/McCormick asked his "former" secretary, Cheryl Straka, to arrange to pick up a document from RESD and bring it back to McCormick's "former office" so that Granlund's wife could "pick up that document and take it to someone at San Bernardino International Airport to deliver it to someone associated with the jail[.]" *Id.*, p. 7, l. 19 -

p. 8, l. 6. In light of the implausibility of McCormick's scenario, it is evident that Granlund made his request on December 28th, as reflected by the RESD diary.

14. Dec. 29, 2004: RESD Renews Inspection Request to Maranatha

By email dated December 29, 2004, M/Rendulich requested T/Moreland to make the Maranatha Jail available to the County's appraisers on January 10, 11, 12, or 13, 2005. App., Ex. 159. M/Rendulich renewed her request for a copy of Maranatha's contract with the CDC and information on Maranatha's past three years of operating expenses. Id.

15. Dec. 29, 2004: D/Jenkins Provides Further Repair Information

On December 29, 2004, M/Rendulich wrote in the RESD diary: "Doyle [Jenkins] will meet w/appraiser – Sent out inspection info. Doyle wants large rooms subdivided. May have enough money in \$3.2 million – if not[,] will have to go to board." App., Ex. 78, p. 3. [REDACTED] stated [REDACTED] that D/Jenkins, "given what time he had to really review this facility and do his best guess," was "very comfortable" with the \$3.2 million figure, "and I really put in that extra \$200,000 as a safety measure." [REDACTED]

[REDACTED]

QUESTION: [REDACTED] in making estimates of the remodeling and maintenance work that needed to be done to the Maranatha facility, are there things that you would have wanted to that you did not have time to do?

ANSWER [REDACTED]: Well, I think it would have been nice to have things done, not that I would necessarily like to do, but maybe, you know, bring in somebody with a little more expertise and spend a little more time nailing down the costs of some of this stuff. [REDACTED]

[REDACTED]

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N. **January 1-11, 2005: Time Pressure from Maranatha; Time Pressure on RESD; Board Votes on Lease/Option without Appraisal**

1. **Jan. 4, 2005: Agenda Item on Maranatha Is Postponed to 1/11/05**

On January 4, 2005, M/Rendulich was notified that the Maranatha Jail agenda item was pulled and postponed to the January 11, 2005 agenda. App., Ex. 78, p. 3.

2. **Jan. 5, 2005: M/Rendulich Writes Summary of Recent Events**

On January 5, 2005, M/Rendulich wrote in the RESD diary a chronology of recent events. App., Ex. 78, p. 3. [REDACTED] the chronology because [REDACTED] was concerned about how quickly the Lease/Option transaction was taking place and because, with regard to the rent in the Lease/Option, "I don't know if that was anywhere near market." [REDACTED]

3. **Jan. 7, 2005: Maranatha Pressures County to Make Decision**

M/Rendulich's notes in the RESD diary for January 7, 2005 state:

1/7/05 - 5 pm Spoke w/Tim [Thompson] - asked if would consider 10 yrs w/ out w/1-yr notice after 5 yrs - NO. No way. Said Sheriff & Postmus knew needed 10 minimum. Asked if he had 6 mos w/state contract. NO. Tim was asked per D.S. [D/Slaughter] per CAO. Tried to reduce term & provide out per County board. But refused. Also, won't wait until appraisal is done (mid-Feb) cause will go w/state deal (says pays more but would [sic] to cover operational costs). [App., Ex. 78, pp. 3-4.]

[REDACTED]

And then I asked him [i.e., T/Thompson] if he had six months under the contract with the State, and he said, "No." That was just trying to figure out how much time they had remaining on their contract with the State, even though it was

a month-to-month, if they knew how much time they had left.

4. Jan. 10, 2005: RESD's Appraiser First Looks at Maranatha Jail

On January 10, 2005, the day before the scheduled Board meeting on the proposed Lease/Option, it appears that the appraisers from Heath Group inspected the Maranatha Jail for the first time. App., Ex. 78, p. 4.

5. Jan. 10-11, 2005: Lease/Option is Further Revised

Also on January 10th,

Previously, the draft Lease/Option permitted the County to exercise its purchase option throughout 2006-2012. The revision and gave the County an option during the first 60 days of the Lease/Option to buy the Maranatha Jail for \$28 million; Lease/Option also provided that, after the first 60 days, the County had to wait until 2013 before it could exercise a purchase option for \$12.5 million. Id., Exs. 186.

Also on January 11, 2005, it appears that

6. Jan. 11, 2005: M/Rendulich Wants "As Is" Jail Appraisal

On January 11, 2005, the same day that the Board considered the report and recommendations to approve the Lease/Option, M/Rendulich sent an email to T/Heath of the Heath Group, the appraiser doing the "as is" appraisal. M/Rendulich thanked T/Heath

for traveling to from San Diego to the Maranatha Jail to inspect it: "What a wicked day it was to travel. I thank you for making that trip all the way from San Diego under such treacherous conditions." App., Ex. 187. M/Rendulich then reiterated RESD's position that it wanted an "as is" appraisal:

Also, Dave Slaughter said the Prospective Value would be nice to have, but not if it delays you beyond one or two days. The "as is" value to guide the County in the purchase price is the most important value to the County. . . . [App., Ex. 187.]

7. Jan. 11, 2005: Board Approves Lease/Option with Maranatha

On January 11, 2005, the Board voted on the revised proposed Lease/Option between the County and Maranatha. App., Ex. 1. The recommendations and report in the agenda item presented to the Board included:

RECOMMENDATIONS

1. Approve a lease agreement, Agreement No. 05-27, with Moreland Family, LLC (Moreland) for an approximate 120,000 square foot prison facility for the Sheriff's Department (Sheriff) in Adelanto for a period of ten years commencing October 1, 2005 in the amount of \$39,991,720.
2. Authorize the use of contingencies in the amount of \$3,200,000 and direct the Auditor/Controller-Recorder to adjust appropriation in the amount of \$3,200,000, as detailed in the financial impact section, to enable the payment from the Sheriff to Moreland for the cost of construction of modifications mandated by the State Board of Corrections and County safety standards. (Four votes required.) [App., Ex. 1, p. 1.]

The recommendations and report did not include an appraisal. Instead, the agenda item included "some financial analysis or calculations, if you will," that D/Slaughter

prepared to show that the proposed Maranatha Lease was a good deal. 7/26/05 D/Slaughter Int., p. 15, ll. 3-12. The "Background Information" section of the recommendations and report stated that an appraisal was underway and "will be used to substantiate the value of the facility in the event the County should elect to exercise its option to purchase during the ten-year term of the lease." App., Ex. 1, p. 2.

The report and recommendations did not state that there was any specific deadline imposed on Maranatha by the CDC that required the Board to consider the Lease/Option without first having an appraisal. App., Exs. 1, 185. It is questionable whether there was any immediate deadline. It appears that Granlund did not come forward to tell the County the exact status of his negotiations with the CDC on Maranatha's behalf.

The report and recommendations further stated: "The total cost of this ten-year agreement is \$43,141,720 (\$39,991,720 for rent payments plus an amount not exceed \$3,200,000 for certain modifications to this prison facility). The total cost in 2004-05 will not exceed \$3,200,000," plus maintenance, custodial, real property taxes, and insurance reimbursement costs estimated at \$445,000 per year. App., Ex. 1, p. 2.

Through January 11th, it does not appear that the Board was informed of any of the following matters, which there are reasonable grounds to believe: (a) Platinum and Granlund had marketed the Maranatha Jail to the County in violation of the conflict of interest provisions of the SBC-Platinum Contract; (b) Platinum and Granlund knew that in December 2004 the CDC had orally agreed and/or was likely to agree to extend Maranatha's contract termination date to June 30, 2005, so that County did, in fact, have time to do an appraisal; (c) Maranatha possibly may have tried to deny, minimize, paint over, and/or white wash a significant mold condition about which Clayton Group had expressed substantial concerns; and (d) the \$3.2 million repair estimate utilized by the County was based on a reduced cost estimate that D/Jenkins made on the assumption that the County would lease, not purchase, the Maranatha Jail.

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The Lease/Option provided, among other things, that:

- (a) The lessor would be Moreland Family, LLC (which is one of the multiple affiliates of T/Moreland collectively referred to as “Maranatha”).
- (b) Subject to terms and conditions, the County would pay monthly rent of \$316,181, plus reimbursement for taxes and utilities, resulting in total annual rent of \$3,999,172. App., Ex. 185, p. 3; id., Ex. 186, p. 2, ¶ 4; p. 3, ¶ 9 (taxes); p. 5, ¶ 16 (utilities). The Lease/Option had a 10-year term, so that the County would pay an estimated \$43+ million during the 10-year term, consisting of annual rent of approximately \$4 million, plus up to \$3.2 million of repairs as specified by the Lease/Option. See id., Ex. 185, p. 3.
- (c) Subject to terms and conditions, the commencement date for the County’s rent obligation was October 1, 2005. The County’s rent obligation would be delayed, without charge to the County, unless and until Maranatha substantially completed all repairs and remodeling required by Exhibit A to the Lease/Option. App., Ex. 186, p. 1, ¶ 3.a. If all required repairs and remodeling were not substantially completed within 90 days of October 1, 2005, then the County had the option to terminate the Lease/Option. Id., p. 2, ¶ 3.d.
- (d) Exhibit A to the Lease/Option specified repairs and remodeling that had to be completed before the County had a duty to pay rent or to close the purchase of the Maranatha Jail. Exhibit A specified certain repairs and remodeling for which the County would pay up to \$3.2 million. All other repairs and remodeling had to be made by Maranatha at its cost. App., Ex. 186, pp. 13-14, ¶ 41. Among other things, Exhibit A required Maranatha to perform, at its cost, “[r]emediation in kitchen to eliminate and preclude the reoccurrence of mold due to intrusion at the floor and wall surfaces. Landlord to submit plans to the County for approval.” Id., Ex. 186, p. 23

(Ex. A). It should be noted that this clause did not say that Clayton Group had identified that the mold condition was possibly injurious to health, nor did the report and recommendations that accompanied the Lease/Option make any such disclosure. On the contrary, the text of the Lease/Option implied that there was no potentially injurious environmental condition at the Maranatha Jail. Specifically, in the Lease/Option, Maranatha represented and warranted that, “to the best of LANDLORD’s knowledge, information and belief, (i) the Premises have not been exposed to Hazardous Substances and are presently free of all Hazardous Substances[.]” *Id.*, Ex. 186, p. 17, § 48.a. In light of Clayton Group’s report concerning visible fungal mold, it is debatable whether this representation and warranty were accurate. It does not appear that the Board was told this.

(e) In making the repairs and remodeling, Maranatha had a duty to retain a qualified architect to prepare “Plans and Specifications” for review and approval by the CAO. If the Plans and Specifications reflected that the County’s total cost would exceed \$3.2 million, then “the Lease shall terminate and each party shall be completely discharged from any duty or liability arising under this Lease.” *App.*, Ex. 186, p. 14, ¶ 41.a. There were no Plans and Specifications attached to the Lease/Option. Instead, it provided that, once the CAO approved the Plans and Specifications, they would be added as Exhibit B to the Lease/Option. *Id.*

(f) The County had an option to buy the jail for \$28 million within 60 days of the signing the Lease/Option. Thereafter, the County would not be able to buy the Maranatha Jail until 2013. At that point, the option price would be \$12.5 million. *App.*, Ex. 186, p. 20, ¶ 53. By that time, the County would have paid eight years rent (totaling approximately \$32 million), plus \$3.2 million in repairs and remodeling, so that the total price

to the County of buying the jail in 2013, including the \$12.5 million option price, would be approximately \$47.3 million.

(g) “If during the course of the administration of this lease, the COUNTY determines that the LANDLORD has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, . . . this Lease may be immediately terminated.” App., Ex. 186, p. 19, ¶ 52.

On January 11th, the Board voted 5-0 to approve the Lease/Option. App., Ex. 1. Despite the unanimous vote, there was some dissension prior to the vote. Asst. CAO D/Arbatzis recalled: “In fact, the entire 3rd District was opposed to getting the new facility. That wasn’t public, though. I think the 3rd District had a lot of questions posed, [like] ‘Why don’t we get rid of the federal contract,’ but the difference was we were selling it to the feds.” 7/26/05 D/Arbatzis Int., p. 31, ll. 2-10.

O. Jan. 14-March 31, 2005: Granlund Tells CDC of Deal; RESD Changes Instructions to Appraiser; Health Dept. Report Criticizes Jail; Granlund Again Contacts CAO Offer re Lease/Option

1. Jan. 14-21, 2005: CDC and Maranatha Sign Further MOU

During January 14-21, 2005, the CDC and Maranatha signed an MOU stating that it confirmed a December 16, 2004 oral agreement to extend to June 30, 2005 the termination date of CDC’s contract with Maranatha. App., Ex. 198.

According to Granlund, once he was told by T/Moreland that Maranatha had a deal with the County, Granlund “shifted gears” and told the CDC that Maranatha’s “not going to renew” its contract with the CDC. 7/20/05 Granlund Int., p. 62, ll. 4-7. Granlund described the CDC’s surprised reaction: “They reared back – ‘Well, wait a minute. We were just kidding.’” Id., p. 62, ll. 16-17. Granlund states that he told the CDC:

“You know, you just really shouldn’t have started this fight.” I said, “I wasn’t at liberty to tell you what he was up

to. There is some privileged information.” I said, “You could have found it out. It’s been in the newspapers. If you read the newspaper, you would know that the sheriff’s made presentations before the Board. The Board is considering purchasing the property.” [7/20/05 Granlund Int., p. 62, ll. 16-25.]

Granlund’s assertion that he regarded information from Maranatha as “privileged information” makes it dubious that Granlund, while marketing the Maranatha Jail to the County, told the County everything he knew about the Maranatha Jail. This inference is confirmed by CAO Uffer’s recollection of his telephone call with Granlund in November 2004; the information conveyed by Granlund to CAO Uffer in that telephone call was an unqualified sales pitch.

2. Jan. 28, 2005: D/Slaughter Sends Email re Upcoming Appraisal

On January 28, 2005, D/Slaughter emailed to D/Arbatzis and G/Newcombe of the CAO’s office comments on whether the County should exercise its option to buy the Maranatha Jail for \$28 million. App., Ex. 205.

In the email, D/Slaughter stated: (a) the total cost to the County of 8 years rent would be \$32 million and the 8th year option price cost \$12.5 million, making \$44.5 million the total cost of buying the Maranatha Jail in 2013; and (b) “the buy-now-or-buy-later decision is a push at about 6%; however if the interest cost of our debt is 4%, then it would be better to buy now and ‘save’ \$6,000,000 (\$44,500,000 -\$38,500,000).”

D/Slaughter’s analysis was preordained by the formula utilized by him to calculate the Lease/Option rent payments, namely monthly payments that would be applied to retire a \$28 million purchase price bearing interest at about 7% interest.

In the email, D/Slaughter further stated: (a) “One other aspect of buying now rather than in 8 years is that if we buy now, we can dispose of this prison at anytime”; (b) “And it seems likely we could recoup our investment, now or later (in 8 years)”; and (c)

“The appraisal that is forthcoming in about 2 weeks should help shed light on that hypothesis.” App., Ex. 205, pp. 1-2. Shortly thereafter, RESD changed instructions to its appraiser so that the appraisal would not state the current “as is” value of the jail.

3. Feb. 1, 2005: Dept. of Health Sends Letter re Maranatha Jail

On January 28, 2005, Sheriff’s Department Lt. Wellott and Jim Nichol and Kathy Taylor of Environmental Health Services (“EHS”), County Department of Public Health, inspected the Maranatha Jail. On the same day, Lt. Wellott notified C/Alban, Director of A&E, that R/Wellott had noticed “extensive” mold at the jail. App., Ex. 203.

By letter dated February 1, 2005, EHS’s Jim Nichol reported on his health inspection of the Maranatha Jail. App., Ex. 208, pp. 1-4. Nichol wrote: (a) “Overall sanitation was poor” (*id.*, p. 1); (b) “The kitchen scored a total of 67 out of 100, a failing grade, normally resulting in closure of a food facility” (*id.*, p. 4); (c) in Dorm 2, there was a “Lack of proper ventilation as evidenced by: accumulation of mold and yeast growth on the walls, particularly just outside shower areas; heavy condensation on walls throughout dorm”; and (c) “The ventilation problem in Dorm 2 is significant. The present condition is unacceptable by any housing standard” (*id.*).

On the same day, Lt. Wellott emailed a copy of the Dept. of Public Health’s February 1st findings to County personnel, including RESD Director D/Slaughter, M/Rendulich, L/Rozko, and A&E Director C/Alban. App., Ex. 209. Later that day, Lt. Wellott sent a further email stating: “I now have a better understanding of what Doyle [Jenkins] and the others were talking about following their visit.” App., Ex. 209.

4. Feb. 16-21, 2005: RESD Changes Instructions to Appraiser

As the substandard condition of the Maranatha Jail became increasingly apparent, RESD changed its instructions to Heath Group. In substance, the County asked Heath Group to value the jail on an “as proposed” (i.e., “as hoped for”) basis, instead of on an “as is” basis; the County further wanted the “as proposed” value to assume that

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Maranatha had made all repairs required of it by the Lease/Option. This change of direction is reflected by five emails:

By email dated February 16, 2005, M/Rendulich sent to T/Heath and John Heath (“J/Heath”), principals in Heath Group, a copy of the Lease/Option. M/Rendulich’s email stated: “Our Director would appreciate it if you would include this in your analysis.” App., Ex. 233. In other words, RESD was asking Heath Group to use the County’s lease to tell the County how much the Maranatha Jail was worth.

By email dated February 16, 2005, J/Heath replied to M/Rendulich: “[I]t was clearly set forth in our meeting that the scope of the appraisal would address the ‘as is’ valuation plus the ‘Repair’ in Exhibit A. We can certainly provide an ‘as proposed’ valuation; however, we would need more detail on the \$3,200,000 in ‘Upgrades and Modifications’ (cost breakdown, detailed specifications, plans).” App., Ex. 237.

By email dated February 16, 2005, M/Rendulich replied to J/Heath: “You are correct in your statement . . . that I specifically requested an ‘as is’ valuation. Due to circumstances of a rushed nature, there is a lease now in place with the County and I will gladly present the terms to you in more concise detail (easier than reading our lease). . . . As for the \$3,200,000 in upgrades, I cannot give you more specific information – a lot of the work is not upgrades as much as it is modifications to meet County and Federal standards.” App., Ex. 237 (emphases in original text).

In an email dated February 16, 2005 to Maranatha’s T/Thompson, J/Heath stated: “[I]t appears now that the County wants a value that reflects the ‘as proposed’ property taking into account the \$3,200,000 in ‘Upgrades.’” App., Ex. 234.

On February 21, 2005, J/Heath sent an email to M/Rendulich to confirm that the County no longer wanted an “as is” valuation of the Maranatha Jail. J/Heath wrote: “This is to notify you that we have received the most recent information on the Adelanto Prison. It is now our understanding that we are able to value the prospective use of this facility to

include the recently executed lease. It is further our understanding that you will no longer require the current 'as is' value. . . ." App., Ex. 236.

5. Feb. 25, 2005: Appraiser Submits "As Proposed" Appraisal

By letter dated February 25, 2005, Heath Group submitted to the County an appraisal of the Maranatha Jail. App., Ex. 250. The appraisal did not provide an "as is" valuation of the Maranatha Jail. *Id.* Instead, the cover page of the appraisal stated: "EFFECTIVE VALUATION DATE AS OF OCTOBER 1, 2005 – PROSPECTIVE VALUE." *Id.* Heath Group stated that the "prospective value" of the jail at the future date would be \$28 million. *Id.* Heath Group expressly based its "as proposed" valuation of the jail on severable questionable assumptions:

First, Heath Group's appraisal stated that the "cost approach" valuation "was particularly applicable to the valuation of" the Maranatha Jail. App., Ex. 250, p. 1. The Heath Group's "cost approach" valuation of the Maranatha Jail arrived at a value of \$27.7 million for the Maranatha Jail; to arrive at that value, Heath Group included as a cost a 15% "Developer's Profit," totaling \$4,095,658. App., 250, pp. 109, 167.

Second, Heath Group's \$28 million "prospective" valuation of the jail was predicated on Maranatha's making all required repairs by October 1, 2005, using a budget of \$200,000. App., Ex. 250, pp. 56, 171. The section of the appraisal entitled "HYPOTHETICAL CONDITIONS" stated:

The prospective value of the subject assumes all improvements detailed in the County Lease to be completed by the anticipated completion date of October 1, 2005. October 1, 2005 also represents the effective date of valuation for the prospective value estimate. [App., Ex. 250, p. 171.]

Third, Heath Group's appraisal stated that its prospective valuation assumed that there were no detrimental environmental conditions. App., Ex. 250, p. 170. At the time, there was significant remediation required; the full extent of the required remediation, and

how long that remediation might take to perform, were unknown. The section of the appraisal entitled "ENVIRONMENTAL DISCLAIMER" stated:

The value estimated is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. . . . It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value. [App., Ex. 250, p. 170.]

Fourth, Heath Group's appraisal included the furniture, fixtures, and equipment ("FF&E"), which were assigned a depreciated value of \$1,117,705. App., Ex. 250, p. 179. Subsequently, in or about May 6-13, 2005, the County learned that the State, not Moreland, had paid for a portion of the FF&E and might assert a claim for reimbursement of those FF&E. App., Ex. 309.

6. Approx. Feb.-March 2005: Granlund Calls CAO Uffer about Deposit on Purchase Price of Maranatha Jail

In or about February or March 2005, CAO Uffer had a telephone call with Granlund about the purchase of the Maranatha Jail. 8/5/05 CAO Uffer Int., p. 18, ll. 5-16; see App., Ex. 350 (newspapers articles reporting CAO Uffer and Granlund said contact happened in March 2005). CAO Uffer stated at his interview:

Brett called me up, and I remember it was an afternoon call. I remember it was a really rainy day, for some reason that sticks in mind, and the issue was, "If you're going to buy this thing,

is there some way that you can – would the County be willing to make a down payment?” And I don’t remember if it was buying or leasing, I just remember the down payment of the 3 million dollars that were required for capital improvements before the Sheriff could occupy it to preserve Moreland’s ability to go out and get additional capital. And I thought that was a little odd that he would ask me that. And he says, “You know, I have to be real careful what I do here because I do represent them on other issues in the State. I’m not representing them on this deal, but I know Moreland. He asked me a question and I’m following up on his question.

What do you think?” [8/5/05 CAO Uffer Int., p. 17, ll. 2-19.]

In response to this inquiry from Granlund about obtaining a \$3 million down payment from the County, CAO Uffer spoke to G/Newcombe, who said “I don’t think we should do that and I’ll tell him so.” 8/5/05 CAO Uffer Int., p. 17, l. 17 - p. 18, l. 2. CAO Uffer understands that G/Newcombe called Granlund and said “No deal.” *Id.*

Events that occurred on May 6, 2005, described below, made clear that it could have been dangerous to the County to deposit funds in escrow without protecting itself from the claims of possible creditors of Maranatha. App., Ex. 309.

7. March 3-9, 2005: Maranatha Extends Option to April 12, 2005

By fax dated March 3, 2005, M/Rendulich asked Maranatha to extend the 60-day deadline for the County to decide whether to exercise the purchase option in the Lease/Option. App., Ex. 260. M/Rendulich stated that the additional time was needed by reason of Maranatha’s delays in giving information to the County’s appraisers. *Id.*, p. 1.

By letter dated March 9, 2005, Maranatha’s T/Thompson stated to CAO Uffer that: “[T]he County is not required to give notice to Moreland Family, LLC prior to April 12, 2005 to exercise its option to purchase.” *Id.*, Ex. 262.

P. **April 5, 2005: Board Exercises \$28 Million Purchase Option**

On April 5, 2005, the Board considered an agenda item submitted by Sheriff Penrod and RESD Director D/Slaughter. App., Ex. 2. As later modified by the underlined additions set forth below, the agenda item recommended:

RECOMMENDATIONS:

1. Approve exercising the option to purchase Maranatha Correctional Facility (MCF), consisting of approximately 120,000 square feet of prison, grounds, parking, prisoner recreation area, and a storage building located on approximately 13.25 acres, in Adelanto in the amount of \$28,000,000.
2. Authorize and direct the Director of the Real Estate Services Department (RESD) to give the appropriate notice of County's intent to exercise the option to purchase and to execute escrow instructions and any other documents necessary to complete this transaction; including Seller's disclosure of any commission bonuses, finder's fees or other compensation paid to third parties as a result of the sale of the property. [App., Ex. 2, p. 1 (underlining in original text).]

The "Background Information" section of the agenda item stated:

BACKGROUND INFORMATION: On January 11, 2005, the Board approved a 10-year lease agreement (No. 05-27), with options to purchase, with Moreland Family, LLC (Moreland) for MCF located on approximately 13.25 acres in Adelanto. . . . By exercising this initial option, the County can acquire MCF for \$28,000,000 plus County-required modifications at a cost not to exceed \$3,200,000 for a total

not-to-exceed price of \$31,200,000. If exercised within the extended time period, the close of escrow would occur not later than January 2, 2006. If this initial option is not exercised, the next opportunity to exercise an option-to-purchase is in the eighth year of the lease.

On March 1, 2005, the Heath Group completed an appraisal of MCF with a date of value as of October 1, 2005, which is the estimated date for acquisition or commencement of the lease. The purchase price of \$28,000,000 is supported by the appraisal. . . . [App., Ex. 2, p. 1.]

The Heath Group's appraisal supported the purchase price, however, only if the dubious assumptions in the "prospective value" appraisal proved to be true.

The "Financial Impact" section of the agenda item stated:

FINANCIAL IMPACT: Transfers totaling \$28,020,000 will be executed in 2005-06 to enable the payment to Moreland for the cost to acquire MCF. . . . This amount was included in the Sheriff's 2005-06 local cost target for MCF leasing costs. By purchasing MCF, the County will realize annual savings of \$3,999,172 (leasing costs of \$316,181 per month x 12 months plus \$205,000 per year for property taxes). [App., Ex. 2, pp. 2-3.]

The "Cost Reduction Review" section of Report and Recommendations stated that the County Administrative Office had reviewed the agenda item and recommended its approval. App., Ex. 2, p. 3.

On April 5, the Board voted unanimously to approve the Recommendations in the agenda item, with the underlined items added, and thereby approved the County's exercising the option to buy the Maranatha Jail for \$28 million. App., Ex. 2.

Through April 5, 2005, it does not appear that the Board was informed of any of the following matters, which there are reasonable grounds to believe: (a) the “prospective value only” appraisal relied on by the Board was based on multiple doubtful assumptions; (b) Platinum and Granlund had marketed the Maranatha Jail to the County in violation of the conflict of interest provisions of the SBC-Platinum Contract; (c) there was reason to believe that Maranatha may have tried to deny, minimize, paint over, and/or white wash the mold condition about which Clayton Group had expressed concerns; and (d) the \$3.2 million repair estimate utilized by the County was based on a reduced cost estimate that [REDACTED] made on the assumption that the County would lease, not purchase, the Maranatha Jail.

Q. May 2005: County Has Concerns re Maranatha’s Performance

By email dated May 6, 2005, M/Rendulich notified D/Slaughter of information provided on May 5th by Sheriff’s Department Virgil Merrett (“V/Merrett”) that: (1) cast further doubt on the “prospective value only” appraisal, (2) raised questions about Maranatha’s financial responsibility, and (3) tended to show that it would have been ill-advised for the County to comply with Granlund’s March 2005 request of CAO Uffer that the County make a deposit into the escrow. M/Rendulich wrote:

[1] The Moreland Corp. claimed ownership of all kitchen equipment, beds, etc. in the FF&E report they provided for the appraisal. It has since been discovered by the Sheriff’s department that the STATE provided cash for the acquisition of this equipment. The State is now determining if they want to be reimbursed for the depreciated value of this equipment, or if they are just going to let it go. If they request reimbursement, the escrow instructions will have to make some claim that Moreland will have to make that reimbursement to the State from the escrow.

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[2] While the Sheriff was in a meeting on site, the water district had the Moreland Corp[.] served for an unpaid water bill in excess of \$100,000. Could there be others? Again, we will have to make sure the escrow instructions protect us against other potential claims. [App., Ex. 309.]

By email dated May 7, 2005, D/Jenkins notified Sheriff's Department's V/Merrett that D/Jenkins was concerned about the \$3.2 million budget for the remodeling of the Maranatha Jail. D/Jenkins wrote: "[T]he scope of the work to be done with the \$3.2 million has changed substantially from the work identified originally. At this point we need to re-evaluate current remodel requests to the original remodel items." App., Ex. 310. D/Jenkins further wrote that issues concerning remodeling "could seriously affect this deal as currently stated." App., Ex. 310.

By email dated May 9, 2005, G/Newcombe wrote to RESD's D/Slaughter and others that: "I am quite concerned about the direction this is starting to go, and would like to move as decisively as possible to nip it in the bud." App., Ex. 314. Among the items of concern listed by G/Newcombe were: (1) "[t]he potential they misrepresented the issue re: ownership of kitchen equipment"; (2) "[t]he delay with preparation of plans"; and (3) "[c]ost estimates that are exceeding original discussions (to the extent we think Moreland has some responsibility here)." Id.

By letter dated May 13, 2005, RESD Director D/Slaughter wrote to T/Moreland and T/Thompson about the County's concerns relating to Maranatha's progress in repairing the Maranatha Jail. Among other things, D/Slaughter wrote:

(1) "[W]e are being advised that costs will likely be in excess of the \$3,200,000 set forth in the lease, [and] we are requesting whatever information is available now, even though it is preliminary, so we can help expedite any modification of the scope of work, if necessary." App., Ex. 320, p. 1.

(2) “We understand that some plans were submitted to the City of Adelanto for permitting, but these same plans have not yet been presented to the County for review and approval. This too concerns us, and I want to reiterate the approval process necessary for the County in order to ensure this process is not inadvertently circumvented.” App., Ex. 320, p. 2.

(3) “An additional issue of concern is the ownership of certain equipment in the prison that has been included on the list of Furniture, Fixtures and Equipment (FF&E) attached to the lease and valued in the appraisal. We have been advised that this equipment (kitchen equipment, beds, etc.) may have been acquired with State funds and is still technically owned or encumbered in some manner by the State of California.” App., Ex. 320, p. 2.

R. June 2005: Further Concerns re Cost

By email dated June 29, 2005, V/Merrett wrote to M/Rendulich and others that “Moreland is at [\$]4.9 mil with all his inflated blue sky stuff, we are at [\$]3.2 mil.” V/Merrett stated that “we” are preparing a remodel cost chart, “trimming where we can, and [showing] total remodel cost.” App., Ex. 340. He further wrote that the remodel cost “will not exceed 3.2 and we are not going back to the BOS for any additional money.” Id.

S. July 2005: Continuing Concerns re Jail; Denials and Allegations by Granlund, Foster, Maranatha & CAO Uffer

1. July 6, 2005: C/Alban States Concern about Remodeling Costs

By email dated July 6, 2005, V/Merrett notified M/Rendulich, A&E Director C/Alban, and others that: “We are at 3.2 million total cost.” App., Ex. 345. On the same day, C/Alban wrote to V/Merrett: “This is a very lean project, and there isn’t much fat to cut before you are into bone and muscle (as opposed to me).” Id.

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2. July 6-7, 2005: CAO Uffer Announces Probe of Foster

On or about Wednesday, July 6, 2005, CAO Uffer publicly announced that he had received an anonymous packet of documents implicating Foster in possible ethics violations in connection with the 2001 Sunset Parcel that Granlund purchased from the County and, one year later, conveyed to Foster. App., Ex. 346.

Concurrently, Granlund made himself available to the media to confirm the purported accuracy of the information purportedly obtained by CAO Uffer from the anonymous source. App., Ex. 346. At about the same time, Granlund personally told CAO Uffer about Granlund's purported dealings with Foster concerning the Sunset Parcel. 8/5/05 CAO Uffer Int., p. 25, ll. 14-25.

This joint attack by CAO Uffer and Granlund on Foster's ethics concerned a transaction about which Granlund had known for at least three years. If Granlund's allegations were true, then Granlund had withheld that information from the County for the past four years, despite having served the role of trusted advisor to the County. If Granlund's allegations were false, then Granlund was defrauding both the County and the public by making false charges against Foster, who had opposed Platinum and Granlund's conflicts of interest in soliciting contracts from the County.

Granlund admitted his financial motivation to CAO Uffer in July or August 2005:

QUESTION: Did Granlund tell you why he was coming forward at that particular time as opposed to the previous year or the year before that?

ANSWER [CAO UFFER]: Not initially he didn't tell me.

QUESTION: Did he later tell you?

ANSWER: He did. He told me that, you know, he's doing other work, he does consulting work now. That after getting out of the Assembly that's how he earns a living, and

he felt that Jim [Foster], as he put it, was interfering with his ability to earn a living. And Jim was all worked up over this Ashbritt contract that was supposed to be brought against the County and told him to keep his hands off it. And as a result, he had to get away from that contract. And that if I recall correctly, that's when Dave Ellis had to take over and Dave Ellis got the contract and it seemed to be related – that seemed to be the defining moment when the controversy re-erupted between the two of them. [8/5/05 CAO Uffer Int., p. 27, ll. 7-25.]

3. July 18-26, 2005: Granlund's & CAO Uffer's Denials

In July 2005, the County stated its intention to investigate sales of County surplus property, including the recently discovered 2001 transaction involving the Sunset Parcel, which was the subject of Granlund's allegations against Foster. App., Ex. 347.

On or about July 19, 2005, the County stated that its investigation into land deals would expand to examine its purchase of the Maranatha Jail. App., Ex. 347. On the same day, The Press Enterprise quoted Granlund as stating: "I don't represent them [i.e., Maranatha] in their dealings with the County at all." *Id.* The same article quoted CAO Uffer as stating: "Brett Granlund, as far as I'm concerned, was not part of the Maranatha deal. The deal was brought to the County by the sheriff." *Id.* No mention was made of the November 2004 discussion between CAO Uffer and Granlund. *Id.* In that discussion, Granlund had pitched the purchase of the Maranatha Jail to CAO Uffer.

On or about July 20, 2005, Granlund voluntarily submitted to an unsworn interview. At the interview, which was transcribed by a court reporter, Granlund stated:

There was never any kind of a recommendation, a pitch, a why-don't-you. You know, none of that. There was no

representation whatsoever of Moreland to the County.

[7/20/05 Granlund Int., p. 73, ll. 20-23.]

Granlund further stated at his interview that: "I do a multitude of work for Terry Moreland – low income housing." 7/20/05 Granlund Int., p. 64, ll. 4-6. Granlund further stated that he is currently dealing with the CDC to help T/Moreland sell a jail in Kern County to a company named Cornell. *Id.*, p. 64, l. 4 - p. 65, l. 3.

On or about July 26, 2006, The Sun reported that CAO Uffer said that Granlund contacted CAO Uffer in March 2005 about the Maranatha Jail. App., Ex. 350. On the same day, the Press Enterprise reported that Granlund said that he contacted CAO Uffer in March 2005 about the jail. *Id.* Again, no mention was made of the November 2004 discussion between Granlund and CAO Uffer. *Id.*

T. August 2005: G|R Interviews CAO Uffer; Maranatha Sues CDC

1. Aug. 5, 2005: G|R Interviews CAO Uffer

On August 5, 2005, CAO Uffer stated at his interview by G|R that Granlund had contacted CAO Uffer in November 2004. CAO Uffer stated: "I think the conversation was, 'I understand you guys are looking at this jail. You know, pretty solid, nice facility. I've done work on the Prison Board. I know the facility, you know, not a bad deal for the County,' pretty generic conversation." 8/5/05 CAO Uffer Int., p. 16, l. 17 - p. 17, l. 2.

2. Aug. 17, 2005: Maranatha Sues CDC

On August 17, 2005, Maranatha Corrections LLC, Moreland Family LLC and T/Moreland filed a lawsuit against the CDC. The lawsuit is entitled Maranatha Corrections LLC et al. v. State of California; The California Department of Correction; Jeanne S. Woodford et al., Kern County Sup. Ct. Case No. 256136.

Maranatha's complaint alleges causes of action for, among other things, defamation, libel, and breach of contract. Counsel of record for Maranatha is Morrison & Foerster, which is also counsel for Platinum. Among other things, Maranatha's complaint alleges that the CDC wrongly accused Maranatha of misappropriating ITRF.

U. Sept.-Oct. 9, 2005: Further Delays and Concerns about Maranatha

1. Sept. 9, 2005: D/Slaughter & C/Alban Send Joint Letter

On September 9, 2005, RESD Director D/Slaughter and A&E Director C/Alban jointly sent a letter to Maranatha's T/Moreland and T/Thompson. App., Ex. 355. The letter reminded Maranatha that the construction completion date was October 1, 2005 and suggested that Maranatha request an extension to give the County time to review the request. *Id.* In the letter, D/Slaughter and C/Alban also stated:

(A) "Pursuant to Sub-Paragraph 41(a), LANDLORD'S IMPROVEMENTS, of County Contract No. 05-27 (the 'Contract'), you, as the LANDLORD, agreed to provide the Plans and Specifications for Improvements and the total costs to complete the Improvements for review and required approval by the County Administrative Officer ('CAO'). The Plans and Specifications given to the County on Friday, September 2, 2005, 2005, do not adequately address the entirety of the proposed improvements." App., Ex. 355.

(B) "The County is aware that Moreland Corporation is actively undertaking construction on required remediation work on the Adelanto Correction Facility and may be doing some preliminary work on the Improvements even without approval of the Plans and Specifications by the CAO. [¶] However, at least as to any work on the Improvements, Moreland Corporation has been advised several times and must certainly understand that such construction is at its own financial risk pending approval of the Plans and Specifications by the CAO per Sub-Paragraph 41(a) of the Contract." App., Ex. 355.

2. October 4, 2005: Maranatha Does Not Complete Jail; Still Mold

Under the Lease/Option, the initial deadline for Maranatha to complete repairs and remodeling to the Maranatha Jail was October 1, 2005. Maranatha did not complete the

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required repairs and remodeling by October 1. Maranatha blamed the County for a part of Maranatha's delays. On October 4th, the County granted Maranatha an extension until November 15, 2005, before liquidated damages may be imposed. App., Ex. 356.

The Lease/Option provides that, if Maranatha fails to substantially complete the repairs and remodeling by January 1, 2006, then "COUNTY can elect to terminate this Lease by giving written notice to LANDLORD at any time before LANDLORD delivers possession of the Premises to COUNTY." App., Ex. 186, p. 2, ¶ 3.d.

As of October 5, 2005, Clayton Group has not confirmed, and is not expected to confirm, that Maranatha has remediated the mold condition at the Maranatha Jail.

VI. PLATINUM/GRANLUND IMPROPERLY PARTICIPATED IN NEGOTIATING THE LEASE/OPTION AND HAD RELATED CONTACTS

A. Granlund Participated in Negotiating the Terms and Conditions

There is reasonable cause to believe that Granlund participated in negotiating the terms and conditions of the Lease/Option and had other contacts with County staff. Specifically, there is reasonable cause to believe:

: (1) The specific term and condition that Granlund helped negotiate was the requirement that the County sign the Lease/Option in January 2005, without waiting until February 2005, which was the soonest that the County could obtain an appraisal.

(2) Maranatha's negotiating strategy with the County included pressuring the County to commit to the Lease/Option during the first two weeks of January 2005, without waiting to appraise the Maranatha Jail. Maranatha made a January 2005 signing date a deal point. Maranatha accomplished this by telling the County, including M/Rendulich, that Maranatha would commit to a new contract with the CDC if the County did not commit to the Lease/Option by January 4-11, 2005. In appears that, on January 7, 2005, M/Rendulich specifically inquired of Maranatha's T/Thompson whether Maranatha had an additional six months on its contract with the CDC; in response, T/Thompson said "NO," as reflected by M/Rendulich's RESD diary. A subsequent

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written MOU between Maranatha and the CDC tends to show that an accurate answer would more likely have been "YES," in that the CDC had orally agreed on December 16, 2004 to give Maranatha a six month extension of the termination date.

(3) The County's prison appraiser, Heath Group, was hired on December 15, 2004 and had told the County that the appraisal would not be completed in January 2005. Maranatha's January 2005 deadline therefore deprived the County of the ability to appraise the Maranatha Jail prior to committing to the \$40 million Lease/Option.

(4) Maranatha's top officials, T/Moreland and T/Thompson, kept Granlund informed of the status of T/Moreland's negotiations of the Lease/Option with the County. Granlund admittedly had the job of keeping the CDC at bay while T/Moreland procured the County's consent to the Lease/Option. Because Granlund advised T/Moreland and T/Thompson, there is reason to believe that their sales strategy resulted from discussions with Granlund, who could not effectively negotiate with the CDC without knowing the status of Maranatha's negotiations with the County.

(5) It appears that Granlund also directly conveyed to County personnel that the Maranatha Jail was available but might shortly become unavailable. Granlund admittedly attempted to use this approach on Foster in October 2004. Granlund combined this approach with recommending the jail to CAO Uffer. By stating or suggesting to the County that the Maranatha Jail was a good and scarce commodity that might become unavailable, Granlund supported the negotiating strategy of Maranatha in convincing the County to forego obtaining an appraisal that RESD had repeatedly indicated it wanted.

(6) On or about July 20, 2005, Granlund voluntarily submitted to an unsworn interview. At the interview, which was transcribed by a court reporter, Granlund stated:

There was never any kind of a recommendation, a pitch, a why-don't-you. You know, none of that. There was no representation whatsoever of Moreland to the County.

[7/20/05 Granlund Int., p. 73, ll. 20-23.]

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(7) Granlund's above-quoted assertion was contradicted by CAO Uffer.

According to CAO Uffer, he was told the following by Granlund in or about November 2004: "I think the conversation was, 'I understand you guys are looking at this jail. You know, pretty solid, nice facility. I've done work on the Prison Board. I know the facility, you know, not a bad deal for the County,' pretty generic conversation." 8/5/05 CAO Uffer Int., p. 16, l. 17 - p. 17, l. 2. The contradiction of Granlund by CAO Uffer on this key point permits the inference that Granlund, during G|R's investigation, sought to falsify and conceal from the County Granlund's role in assisting Maranatha.

(8) During the County's negotiations of the Lease/Option, Platinum and Granlund had an affirmative obligation to contact the County and disclose to it that Platinum, through Granlund, had undertaken to represent Maranatha in making a sales pitch to the County. This affirmative obligation was imposed by the conflict-of-interest provisions of the SBC-Platinum Contract. By reason of that contract, Platinum's and Granlund's failure to affirmatively tell the County in writing of that conflict constituted an implied representation that Platinum did not represent Maranatha in that regard. In other words, Platinum's and Granlund's silence on this point was a communication to the County that its bargaining opponent, Maranatha, had not purchased the disloyalty of a trusted advisor of the County.

(9) In none of Granlund's repeated contacts with the County did he tell the County that the CDC had orally agreed on December 16, 2004 to give Maranatha an extension of its termination date to June 30, 2005, so that there really was no reason for the County to rush to enter into the Lease/Option in early January 2005, without an appraisal or all a full assessment of the repairs and remediation that had to be done.

(10) In none of Granlund's contacts with the County did he tell the County that Platinum, Granlund's employer, procured its lobbying contract from the County by providing an untrue, incomplete list of clients and conflicts; or that Platinum and

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Granlund were committing an ongoing violation of the conflict of interest provisions of Platinum's contract with the County.

(11) Platinum's violations of the conflict of interest provisions of its contract with the County likely influenced the County's decision-making process. The County's records reflect that, even without knowing of Platinum's improper dealings with the County on Maranatha's behalf, there was reluctance within the Board and RESD to recommend the Lease/Option unless and until Heath Group appraised the fair rental value of the Maranatha Jail. In December 2004, the Board authorized RESD to get an appraisal before recommending the Lease/Option. The Board changed its mind only after Maranatha alleged that the Maranatha Jail would become unavailable unless the County committed to the Lease/Option in January 2005, before an appraisal. RESD Director D/Slaughter and RESD's M/Rendulich both felt that an appraisal should be obtained before signing the Lease/Option. D/Slaughter repeatedly stated this belief in emails sent prior to January 11, 2005. M/Rendulich told Chief Deputy County Counsel R/Hinesely that M/Rendulich could not support the rent charged in the Lease/Option.

(12) The "prospective value" appraisal that the County obtained after signing the Lease/Option valued the jail at \$28 million using questionable assumptions. The appraisal expressly assumed that the repairs to the jail would be completed by October 1, 2005 (they were not) and that the jail would be free from any environmental contamination (something that plainly was not the case as of the time of the appraisal; it remains unclear when and whether the mold will be removed). In valuing the jail using the "cost approach," the appraiser arrived at a value of \$27.7 million on the assumption that the cost would include a 15% "Developer's Profit," totaling \$4,095,658. The appraisal assumed that Maranatha owned the FF&E, which may not be the case.

B. Granlund Had Numerous Direct & Indirect Contacts with the County

There is also reasonable cause to believe that Granlund repeatedly contacted County personnel to market the jail by means of the following contacts:

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- (1) Granlund told County Sheriff Penrod that the Maranatha Jail was available and should be considered by the County.
- (2) Granlund told CAO Uffer that the Maranatha Jail was a “nice” facility and that the proposed Lease/Option would be “not a bad deal” for the County.
- (3) Granlund stated or suggested to Foster and one or more other County representatives that the Maranatha Jail might shortly become unavailable in that Maranatha might enter into a long-term contract with the CDC.
- (4) Granlund requested CAO Uffer to cause the County to make a down-payment on the Lease/Option.
- (5) Granlund attempted to limit Foster’s ability to stop Granlund from soliciting County contracts for clients of Platinum, who included Maranatha.
- (6) After receiving advance notice from Sheriff Penrod that County representatives planned to tour the Maranatha Jail, Granlund went to the jail and toured it with those County personnel.
- (7) Through Coroner B/McCormick, Granlund sought non-public information from the County about the proposed lease and sale transaction.
- (8) Through Maranatha’s principals T/Moreland and T/Thompson, Granlund received periodic reports about Maranatha’s negotiations with the County and advised T/Moreland and/or T/Thompson about coordinating those negotiations with Granlund’s negotiations with the CDC, so that Maranatha could hold the CDC at bay until Maranatha had a contract with the County.
- (9) Despite the affirmative disclosure obligations placed on Platinum by the SBC-Platinum Contract, Platinum and Granlund do not appear to have fully disclosed to the County Granlund’s role in representing a competing interest, namely Maranatha, in its dealings with the County.
- (10) Granlund indicated at his interview that he may have spoken to someone at the County about the need to appraise the Maranatha Jail: “I believe I said

that it would be a good idea under the circumstances and the things that have gone on in the County – the K-Mart building, et cetera – to make sure you got an appraisal and all that sort of thing.” 7/20/05 Granlund Int., p. 74, ll. 4-10; see id., p. 72, ll. 3-8.

- (11) Granlund indicated at his interview that, with regard to T/Moreland, Granlund may have replied to the inquiry: “Is this guy ok to do business with?” 7/20/05 Granlund Int., p. 74, ll. 1-3.

C. **Granlund and Platinum’s Contacts with the County Violated the Conflict of Interest Provisions of the SBC-Platinum Contract**

There is reasonable cause to believe that Granlund’s and Platinum’s participation in negotiating the Lease/Option and contacting County personnel, including CAO Uffer, violated the conflict of interest provisions of the SBC-Platinum Contract. This point is significant because it highlights that Platinum and Granlund had a duty to provide information to the County.

1. **Platinum Violated Its Duty to Provide Complete List of Clients**

There is reasonable cause to believe that Platinum violated §§ 5.E-F of the SBC-Platinum Contract. Sections 5.E and 5.F required Platinum to provide the County with “an updated list of all current clients for submission to the Board of Supervisors along with this contract.” App., Ex. 3, p. 4. Platinum did not give the County a client list showing all Platinum’s clients. Instead, Platinum gave the County a list that omitted Maranatha.

Platinum and Granlund apparently contend that the conflict of interest provisions of the SBC-Platinum Contract did not require Platinum to disclose its consulting clients (e.g., Maranatha), as opposed to clients for whom Platinum was a registered lobbyist. This argument has little support in the text of the contract. The SBC-Platinum Contract did not state that the word “clients” in § 5 of the contract meant only “lobbying clients (but not consulting clients).” See App., Ex. 3.

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In addition to lacking clear support in the text of the SBC-Platinum Contract, Platinum's narrow interpretation of "clients" appears doubtful because Platinum's interpretation, if accepted, would have absurd results. Under Platinum's interpretation, the SBC-Platinum Contract would require Platinum to disclose to the County a client who paid Platinum \$5,000 per month to lobby the Legislature but would not require Platinum to disclose to the County a "consulting" client who paid Platinum \$100,000 per month, or a "success fee" of 5%, to solicit a contract from the County.

Platinum and Granlund may contend that, through conversations with Granlund, the County had an awareness that Granlund represented Maranatha. Under the terms of the SBC-Platinum Contract, the County's purported awareness based on vague oral discussions would not constitute compliance by Platinum with the SBC-Platinum Contract. The contract provided that a conflict waiver had to be obtained by Platinum's giving written notice of the conflict for the purpose of full disclosure. At no time during the negotiation of the Lease/Option did Platinum or Granlund submit any writing purporting to make full disclosure of Platinum's relationship with Maranatha or any possible conflict arising from that relationship.

2. Platinum Violated Its Duty to Notify County of Conflicts

There is reasonable cause to believe that Platinum violated other requirements of § 5 of the SBC-Platinum Contract. Section 5 required Platinum to provide prior written notice to the County before Platinum undertook to represent a client in a matter that might conflict with the County's interests. In addition to failing to provide written notice that Maranatha was Platinum's client, Platinum also failed to provide prior written notice to the County that, following the CDC's June 2004 notice of termination, Platinum and Granlund helped Maranatha market the Maranatha Jail to the County.

Platinum's representation of Maranatha in that regard constituted a conflict of interest in that Maranatha's goal would be to get the highest possible rent/purchase price from the County and to maximize profit by doing as little mold remediation as possible,

while the County's goal would be to pay the lowest possible rent/purchase price and to avoid buying a mold-contaminated jail.

Platinum's and Granlund's response to the County's investigation of the Maranatha Jail transaction compounded Platinum's violations of the disclosure obligations imposed by the SBC-Platinum Contract. Instead of curing the violation, Granlund apparently sought to cover it up by falsely denying that he helped Maranatha market the jail.

3. **Platinum Violated Its Duty to Comply with the Political Contribution Restrictions Imposed by the ICMA Code**

Section 6.A required Platinum to adhere to the ICMA Code of Ethics adopted by the County's Board, and the ICMA Code of Ethics required its adherents to "[r]efrain from participation in the election of the members of the employing legislative body." App., Exs. 3 and 6. It appears that Platinum, through Granlund, violated this requirement.

When Platinum signed the SBC-Platinum Contract and Supervisor Biane and other Board members voted to approve it, Granlund was a personal co-guarantor with Supervisor Biane of repayment to Valley Bank of at least \$25,000 of a \$150,000 campaign loan made by Valley Bank to Supervisor Biane's campaign committee. *Id.*, Ex. 26. Further, Granlund's guarantee, which was a form of political contribution to Supervisor Biane, remained outstanding through at least July 1, 2003. *Id.*

It may be argued that the word "shall" in the § 6.A of the SBC-Platinum Contract meant that it imposed duties on Platinum that only applied in the future, so that § 6.A did not prohibit Granlund's past conduct of co-guaranteeing Valley Bank's \$150,000 campaign loan to Supervisor Biane. That argument disregards that Granlund continued to guarantee the loan to Supervisor Biane through at least July 1, 2003, more than six months after the Board approved the SBC-Platinum Contract. App., Ex. 26.

It may also be argued that the contract's reference to the ICMA Code of Ethics was a mistake. That argument appears to lack merit, because a nearly identical reference

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to the ICMA Code of Ethics appears in the 2002 lobbying contract between the County and another lobbyist, Copeland, Lowery, Jacquez, Denton & Shockey, LLC. App., Ex. 21, p. 5, § 6.A (stating that Copeland firm “shall adhere to the ICMA Code of Ethics as adopted by the County Board of Supervisors on August 10, 1999”). Equally doubtful is the argument that the County’s adoption of the ICMA Code of Ethics was a meaningless gesture that the County never intended to implement. The County’s unexpressed intent not to enforce a Code of Ethics would not make it any less real than other any other official rule, regulation, or contract officially and publicly approved.

4. Platinum Violated Its Duty to Comply with the Integrity Provisions Imposed by the ICMA Code

As stated, Section 6.A of the SBC-Platinum Contract required that Platinum adhere to the ICMA Code of Ethics. In addition to prohibiting Platinum from making political contributions to County officials, the ICMA Code of Ethics required that Platinum “[b]e dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected official, of other officials and employees, and of the public.” See App., Exs. 3 and 6. It appears that Platinum, through Granlund, violated this requirement. Specifically, Platinum and Granlund repeatedly failed to disclose Platinum’s clients and conflicts of interest as required by the SBC-Platinum Contract.

D. Failure to Address the Results of Platinum’s Violations Poses a Substantial Risk of Ongoing Injury to County

It may be argued that the apparently ongoing and repeated contract violations committed by Platinum through Granlund are trivialities that may be remedied by admonishing Granlund and asking Platinum not to do it again. There is reasonable cause to believe that this course of action would result in substantial injury to the County. Specifically, there is reasonable cause to believe:

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First, the results of Platinum's contractual violations do not appear to be trivial in that it appears that they influenced the County to enter into the Lease/Option. The Clayton Group's October 2004 report leaves no doubt that the County is on notice that there is a possibly hazardous mold condition at the facility. Moving inmates and County personnel into the jail without an extremely diligent remediation is an invitation to litigation. It does not matter that the mold condition may ultimately prove non-injurious; any actions taken that create an impression that the County sought to hide the mold condition will merely play into the hands of litigants, including inmates and County personnel, who may seek to allege that the County knew of, failed adequately to address, and then sought to conceal a possible health hazard.

Second, although it appears that Platinum committed multiple violations of its contractual conflict of interest duties to the County, the full scope of those violations remains unknown because Platinum denies (or fails to acknowledge) that it has any duty to the County to disclose the identities of Platinum's consulting clients and what conflicts of interest result from Platinum's involvement with those clients. It is impossible to assess the full extent of the conflicts of interest and possible harm resulting therefrom (and that may result in the future) without forcing Platinum to fulfill its obligations under the SBC-Platinum Contract.

VII. THE MARANATHA JAIL WAS NOT IMMEDIATELY AVAILABLE & THE SHERIFF COULD NOT IMMEDIATELY USE A NEW JAIL

There is reasonable cause to believe that: (a) neither the City Jail nor the Maranatha Jail was immediately available, and (b) the Sheriff did not have an "immediate" need for a new jail because he did not have the staff available for a new jail. Specifically, there is reasonable cause to believe:

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(A) The Sheriff did not have the ability to staff any new jail facility sooner than six to nine months, and perhaps longer, from the signing of the lease, because the Sheriff needed to train new staff. This fact is made clear by contemporaneous memos prepared by D/Slaughter and R/Hinesley during the negotiations of the Lease/Option.

(B) The availability of the Maranatha Jail was limited by the need to repair and remediate the facility. Contemporaneous notes, in addition to the deadlines in the Lease/Option, reflect that the County estimated that the repair and remediation of the Maranatha Jail would take eight to nine months. In making those estimates, the County did not have a complete set of plans and specifications for the Maranatha Jail, nor did the County have any written report from a credentialed environmental consultant showing the full cost and extent of required remediation. More than nine months after the County signed the Lease/Option, Maranatha's jail still is not available to the County. As of September 9, 2005, Maranatha had not yet delivered an acceptable set of Plans and Specifications to the County as required by the Lease/Option. Maranatha did not meet the initial completion date of October 1, 2005.

(C) The availability of the City Jail was limited by the necessity that Adelanto have cause to terminate its contract with the CDC. According to Adelanto representatives, the City Jail could and would have been available because the City had grounds to terminate its contract with the CDC for cause. Adelanto's assertions do not appear to be entirely speculative because: (1) Adelanto had previously prevailed in litigation against the CDC relating to its failure to adjust costs; (2) it appears that the CDC continued not to make cost adjustments in its reimbursement of Adelanto; and (3) Maranatha's ability, with Granlund's input, to turn Maranatha's breach of its contract with the CDC into a contractual "out" from any further obligations to the CDC tends to show that a skilled negotiator could negotiate a contract termination with the CDC.

(D) The question of whether the City Jail was immediately available implies that the County was merely presented with the choice of buying the City Jail or the

Maranatha Jail. Even if the Maranatha Jail was the only option, the County still had to decide when and at what cost the Maranatha Jail could be made safely habitable; further, regardless of the City Jail's availability, the County would still have the goal of paying the lowest possible price for the Maranatha Jail. Granlund and Platinum, by failing to disclose their conflicting roles and key knowledge about the timing of Maranatha's negotiations with the CDC, hindered the County from making a fully informed decision concerning whether to forego an appraisal and further environmental assessment.

VIII. GRANLUND INDIRECTLY RECEIVED FEES FOR REPRESENTING MARANATHA IN ITS DEALINGS WITH THE COUNTY; GRANLUND MAY OR MAY NOT RECEIVE A COMMISSION

There is reasonable cause to believe that Granlund received fees in connection with his services relative to the Lease/Option and expected to receive, and may yet receive (if and when there is a closing of the lease and sale transactions), a commission relative to the County's \$28 million lease and purchase of the Maranatha Jail. Specifically, there is reasonable cause to believe:

(A) Platinum employed Granlund throughout 2004-2005. Granlund's employment contract with Platinum provided that, in addition to a salary and expenses, Platinum annually would, in its discretion, pay Granlund a bonus.

(B) During 2004-2005, while Granlund worked for Platinum, it received monthly consulting fees from Maranatha. Further, on Platinum's behalf, Granlund personally serviced Maranatha's account during 2004-2005. These facts support an inference that at least a portion of Granlund's salary is fairly regarded as attributable to his services rendered to Maranatha.

(C) As stated, Granlund's contract with Platinum also provided that it had discretion to pay Granlund an annual bonus. After Foster objected to Granlund's procuring County contracts for Platinum's clients (including Maranatha and AshBritt), Granlund told a friend, Gary Henson, that Foster had hurt Granlund financially. Granlund

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made a similar statement to CAO Uffer. Granlund's statements permit an inference that Granlund understood and expected that he would receive a bonus from Platinum for procuring County contracts for Platinum's clients, who included Maranatha.

(D) When Granlund was asked whether Platinum had any kind of a bonus or special compensation arrangement with another Platinum client, AshBritt, Granlund flatly replied "No," before disclosing that Platinum had a performance-based fee arrangement with AshBritt. 7/20/05 Granlund Int., p. 87, l. 14 - p. 89, l. 1.

(E) It appears that Granlund, Platinum, and Maranatha dispute that Granlund was paid any fees or commissions in connection with the lease and sale of the Maranatha Jail to the County. According to Granlund, Maranatha pays Platinum a monthly payment of \$6,000, with no commission or bonus if the Maranatha Jail is sold to the County. 7/20/05 Granlund Int., p. 86, ll. 2-13. Although the denials of Granlund, Platinum, and Maranatha are entitled to some weight, they are not dispositive. Without further information from Platinum, Maranatha, and Granlund, G|R concludes that it remains unresolved whether, in addition to the fees that Granlund received (as described above), he may also have received some commission or other special compensation or reimbursement. G|R notes that, according to Granlund, Platinum does a "multitude" of work for T/Moreland. 7/20/05 Granlund Int., p. 64, ll. 4-6. It is questionable whether Platinum does that "multitude" of work at the \$6,000 monthly rate specified in the written agreement between Platinum and Maranatha. Moreover, that written agreement expired by its terms during 2003. Accordingly, Platinum and Maranatha are now functioning under the terms of an oral arrangement. Similarly, Granlund and Platinum never signed his written employment agreement; accordingly, Granlund and Platinum are now functioning under the terms of an oral agreement. The "terms" of an oral agreement are hard to confirm with absolute certainty; only the parties to the oral agreement truly know what the terms are.

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(F) The credibility of Granlund and Platinum is subject to doubt by reason of: (1) their repeated failure to make written disclosure to the County of Platinum's and Granlund's clients (including Maranatha and AshBritt) and conflicts of interest as required by the SBC-Platinum Contract, (2) the inaccuracy of Granlund's denials at his interview that he marketed the Maranatha Jail to the County; (3) Granlund's use of B/McCormick as an agent to obtain a copy of the recently revised, non-public Lease/Option from the County, and (4) Granlund's shifting answer about the compensation arrangement between Platinum and another of its clients, AshBritt.

(G) The credibility of Maranatha is subject to doubt by reason of: (1) Maranatha's arguably inaccurate representations about the environmental condition of the Maranatha Jail, including Maranatha's denial of any mold condition, and Maranatha's possible painting and white-washing of the Maranatha Jail at about the time Clayton Group inspected the jail; and (2) Maranatha's questionable assertions to the County that it had to commit to the Lease/Option in January 2005, before completing an appraisal, notwithstanding that: (a) the CDC had never paid Maranatha in excess of \$3 million in annual rent, while the County was proposing to pay substantially more, and (b) on December 16, 2004, the CDC may have orally agreed to extend Maranatha's contract termination date to June 30, 2005; and (3) the CDC's allegations against Maranatha concerning concealment; although the CDC's allegations are disputed, those allegations were based on the CDC's own dealings with Maranatha, and its June 2004 termination letter was lengthy and detailed and included supporting documentation.

IX. DISCUSSION OF COUNTY SURPLUS REALTY SALES DURING THE PAST FIVE YEARS TO COUNTY EMPLOYEES

(A) Exhibits A-I of the Appendix include information compiled and provided to GJR by RESD at the request of CAO Uffer and Associate Administrative Officer G/Newcombe. The information compiled and provided includes the names of initial buyers of County surplus realty. The information further reflects the names of any

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persons who were initial transferees of the initial buyer. In other words, if the County sold surplus realty to A, who then transferred the property to B, then the names of both A and B are reflected in the information provided by RESD.

(B) Govt. Code § 1090 prohibits a public official or employee from participating in an official capacity in a public contract (including a sale) in which the official or employee has a financial interest. The County Personnel Rules broadly prohibit self-dealing and conflicts of interest by County officials and employees. County Policy No. 11-11 states:

It is the policy of the Board of Supervisors that the disposal by the County of any property (real or personal) authorized by statute or County policy be conducted in a fair manner. County administrative officials are prohibited from bidding either directly or indirectly through an intermediary at auctions or other sale of property. This prohibition is in addition to any prohibitions or limitations contained in any other County Policies. [App., Ex. A.].

(C) County Policy No. 11-11 applies by its terms to “County administrative officials.” The “Policy Amplification” that accompanies Policy No. 11-11 provides that Board members, the CAO, Department heads, and other specifically designated officials are “County administrative officials” within the scope of Policy No. 11-11. The “Policy Amplification” further provides that “County administrative officials” include, among other personnel, “any employee who is in a position to affect or influence the identification of property as surplus or the disposal of the property.” See App., Ex. A.

(D) The information compiled by RESD reflects that, more than a year after Granlund purchased the Sunset Parcel from the County, Granlund transferred that parcel to Foster. App., Ex. D, p. 16; id., Ex. E, p. 32; id., Ex. F, p. 86. Foster denies that he was a silent partner of Granlund’s concerning that parcel. G|R addressed that transaction in a

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prior report. The circumstances of that transaction were disputed by the participants, and that matter is now resolved.

(E) Apart from the Foster-Granlund transaction previously reported, there appear to be three sets of County surplus realty sales made during the past five years to County employees, but the three County employees involved in those sales do not appear to have likely violated Govt. Code § 1090, County Personnel Rules, or County Policy No. 11-11 in purchasing the surplus realty.

(F) **Baldwin Lake Area Realty:** Two of the three sets of surplus realty sales to County personnel involved surplus realty located in the Baldwin Lake area. Pursuant to County policy, sales of that realty are not subject to a public auction requirement, unless the sale price is below RESD's appraisal.

(1) The County acquired land in the Baldwin Lake area for use as a regional park site; however, plans to create a regional park were abandoned by 1986. On April 7, 1986, the Board authorized RESD to begin a program to eventually return County-owned realty in the Baldwin Lake area to private ownership.

(2) On December 11, 1989, the Board authorized RESD to deviate from County Policy No. 11-12 (now No. 8-18). This allowed RESD, subject to Board approval, to make direct sales of Baldwin Lake area parcels to purchasers who agreed to pay market value as determined by an RESD staff appraisal, without public auction.

(G) **Kemper:** Kay Kemper is a County employee in RESD. In or about March 2003, Ms. Kemper married Bradley Floyd. There is one pending Baldwin Lake area surplus realty sale involving Ms. Kemper and there are two prior Baldwin Lake area surplus realty sales that involve Ms. Kemper and/or her spouse, Mr. Floyd:

(1) Currently, Ms. Kemper and Mr. Floyd jointly seek to buy surplus Baldwin Lake area from the County for \$21,000, which is the appraised

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value of the realty. The realty is adjacent to other Baldwin Lake area realty owned by them. By letters dated April 7, 2005, RESD's Tom Dustin, Real Property Agent II, notified other adjacent property owners that the parcel was available for sale at a price of \$2,100. On or about September 30, 2005, RESD Director D/Slaughter notified G|R that this proposed sale will likely be submitted shortly to the Board for its approval.

(2) In early 2003, before marrying Ms. Kemper, Mr. Floyd was in the process of acquiring other surplus Baldwin Lake Area realty. The sale closed on or about March 7, 2003, either shortly before or shortly after the marriage of Ms. Kemper and Mr. Floyd. The County deeded the realty to "Bradley J. Floyd, a single man." Mr. Floyd paid \$12,150 for that property, which was its appraised value as determined by RESD. By memo dated September 22, 2005, RESD's Lou Schnepf confirmed to Director D/Slaughter that Mr. Floyd was not given any discounts or special consideration on this sale. After Mr. Floyd married Ms. Kemper in early 2003, she became the co-owner of the property that Mr. Floyd bought in March 2003.

(3) Previously, on October 2, 2002, Mr. Floyd purchased from the County other Baldwin Lake area realty for approximately \$7,425, which was its appraised value as determined by RESD staff. By memo dated September 22, 2005, RESD's Lou Schnepf confirmed to Director D/Slaughter that Mr. Floyd was not given any discounts or special consideration on this sale.

(H) **Shorett:** A County employee named Marie Lena Shorett (with her spouse, Frederic E. Shorett) agreed to pay \$19,950 on or about February 17, 2003 to purchase County surplus realty that had an appraised value of \$19,950. The property was located in the Baldwin Lake area. The Board approved that sale on March 18, 2003.

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(I) **Ybarra:** A County employee named John T. Ybarra, aka Tom Ybarra, agreed to pay \$500.00 on April 19, 2004 to purchase County surplus realty having “nominal” value. The Board approved that sale on June 8, 2004. The parcel consisted on 6,279 square feet at the southeast corner of California Street and Wildwood Canyon Road in the City of Yucaipa. The Board had long ago, in August 1995, declared that property as surplus. By email dated March 25, 2004, RESD’s Lynne Kottel confirmed that a “full appraisal” would not be performed because the parcel’s shape, zoning, and marketing history reflected that it did not have value. According to a June 8, 2004 agenda item presented by RESD Director D/Slaughter, multiple public auctions of the parcel had failed to attract any bid. In obtaining the Board’s approval of the sale, D/Slaughter reported to the Board that: (a) the parcel was smaller than the minimum lot size of 7,200 square feet required by zoning for that area; (b) a zoning variance was unlikely to be granted by reason of the irregular shape of the parcel and the City of Yucaipa’s setback requirements; and (c) the sale would allow the County to avoid paying ongoing costs of weed abatement and maintenance and to obtain real property tax revenues from the new owner.

(J) G|R notes that the County engages in other types of realty transactions, including sales, leases, real property tax assessments and tax sales, and Public Guardian sales. This report only addresses sales of County surplus real property. G|R did not examine surplus realty transactions that may be pending but that have not occurred.

X. CONCLUSIONS & RECOMMENDATIONS

In conclusion, G|R recommends and finds reasonable cause to believe that:

(A) The SBC-Platinum Contract reflects that the County hired Platinum to serve the County free from conflicts of interest and with full disclosure of Platinum’s clients as of the date the Board approved the contract, in December 2002.

(B) In violation of the SBC-Platinum Contract, Platinum failed to disclose its clients, including Maranatha, when the SBC-Platinum Contract was submitted to the

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Board for its approval. Platinum repeatedly failed to give the County advance full written notice that Platinum planned to represent, and was representing, Maranatha and other clients (including AshBritt Environmental and CCA) in matters in which the clients' interests may have conflicted with the County's interests.

(C) The County should enforce its contractual right under the SBC-Platinum Contract to audit Platinum's performance. The County should also require Platinum to cure and redress its apparent ongoing and repeated violations of the conflict of interest provisions of the SBC-Platinum Contract. In particular, the County should require that Platinum: (1) disclose all the clients that it had as of the signing of the SBC-Platinum Contract; (2) disclose all conflicts of interest that it had during 2003-2005; and (3) return all fees, in excess of \$200,000, paid to it by the County, in addition to compensating the County for any damages and/or ill-gotten gains that may be ascertained by the County upon auditing Platinum and learning its true clients and conflicts.

(D) Based on the County's experience with Platinum, the County should require all County lobbyists and political consultants to sign, periodically update, and confirm in writing their compliance with contractual conflict of interest provisions required by the County in all contracts with lobbyists and political consultants. The written disclosure should require disclosure of any fee-sharing and other financial arrangements with other lobbyists and political consultants.

(E) The County should closely monitor whether Maranatha performs its contractual obligations to repair and remediate the Maranatha Jail as required by the Lease/Option. The County should immediately have Clayton Group, or an equally credentialed (and highly insured) environmental consulting firm, fully assess the mold situation and report in writing to the Board. The County should immediately retain counsel with expertise in defending hazardous mold-type litigation to advise the County on taking appropriate precautionary measures to avoid or lessen the likelihood of such litigation and to prevent the possibility that any legitimate claim could be asserted. That

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counsel should directly report in writing to the Board, in addition to reporting to County staff.

(F) The County should not close the Maranatha Jail transaction without assuring itself that Maranatha has performed its contract. Maranatha's past conduct, including providing the County with a flimsy environmental report, arguably does not show a commitment to remediating the mold condition. At this point, there is a dispute about the extent of Maranatha's performance. It may be that the County has grounds to terminate the Lease/Option. The merits of the Maranatha's position should be scrutinized, especially in light of a further expert assessment of the risks of litigation and/or liability posed by the current status of the mold condition and the manner in which repairs were performed (or not performed) since the Clayton Group's October 2004 report. The need for additional jail space may justify proceeding with the Lease/Option provided that the County first makes certain that the mold condition at the Maranatha Jail is properly remediated to protect inmates, County personnel, and the County.

(G) Before taking action against anyone mentioned in this report, the Board should give that person or entity an opportunity to explain its conduct, in writing and/or under oath, and should welcome any opportunity to obtain additional information that may explain who and what led to the apparent omissions in the reports and recommendations that the Board received in January 2005 and April 2005 in connection with its votes on the Lease/Option and the exercise of the \$28 million purchase option. The advice in the preceding sentence specifically applies to Platinum, Maranatha, Granlund, and CAO Uffer.

(H) Although several County employees purchased County surplus realty during the past 5 years, it does not appear that those transactions likely violated Govt. Code § 1090, the County's Personnel Rules, or County Policy No. 11-11. G|R recommends that the County consider (1) whether RESD should continue to dispose of Baldwin Lake area

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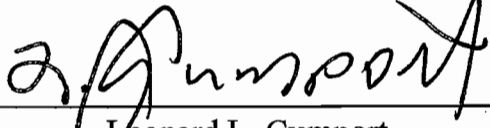
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property without public auction; and (2) whether purchasers of County surplus realty should be required to disclose in writing whether they are County employees.

DATED: October 12, 2005

Respectfully submitted,

GUMPORT | REITMAN

By: 

Leonard L. Gumport
Special Counsel to County of
San Bernardino

TAB

A



County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code			S	Dept.	A	Contract Number			
<input type="checkbox"/> Change				C	CAO		02-1315			
<input type="checkbox"/> Cancel										
County Department					Dept.	Orgn.	Contractor's License No.			
Board of Supervisors										
County Department Contract Representative					Telephone		Total Contract Amount			
Jim Wiltshire							\$108,000			
Contract Type										
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:										
If not encumbered or revenue contract type, provide reason:										
Commodity Code			Contract Start Date	Contract End Date	Original Amount	Amendment Amount				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount				
AAA	CAO	CAO	200	2445		\$108,000				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount				
Project Name					Estimated Payment Total by Fiscal Year					
State Legislative Advocacy					FY	Amount	I/D	FY	Amount	I/D
					02/03	\$54,000				
					03/04	\$108,000				

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name
Platinum Advisors, LLC

Address
1215 K. Street, Suite 1150

Sacramento, CA. 95814

Telephone
916-443-8891

Federal ID No. or Social Security No.
94-3309410

hereinafter called Contractor

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

This contract is entered into this 1st day of January 2003, between the County of San Bernardino, California (hereinafter "County") and Platinum Advisors, LLC (hereinafter "Contractor"). Hereinafter, the term "parties" shall refer to both County and Contractor jointly.

1. Purpose and Scope of Work

A. County hereby engages the services of Contractor to advise, counsel and represent County with respect to regulatory, Administration, and budgetary/fiscal affairs with the legislative and executive branches of the state government and to function in cooperation with the other firm engaged by the County to provide general state advocacy services.

B. Contractor hereby agrees to faithfully, and to the best of its ability, promote and represent County and its interests as described above, with respect to state legislative proposals, grants and funding sources and to perform the work set forth in this contract. The scope of services to be performed by Contractor is as follows:

General Scope of Services

- A. Assist the County in developing and implementing an effective state advocacy strategy and annual legislative program to:
 - influence state laws and policies as they relate to County priorities, programs and operations;
 - increase funding for County priorities, programs and operations.
- B. Research, monitor and provide information and representation to the County on such matters as:
 - State bills and laws;
 - Regulatory, Administration, and budgetary/fiscal issues;
 - Legislative hearings, reports and testimony;
 - State regulations, guidelines, directives and other administrative policies, both proposed and adopted;
 - Technical memoranda and reports impacting County operations.
- C. Identify available state programs that provide funding or grants for County projects and services, provide assistance in structuring and presenting applications, and monitor and expedite applications.
- D. Represent County interests in meetings with members of the California Legislature and/or their staff, and with state agencies, boards, commissions, committees and other bodies as appropriate.
- E. Prepare briefing materials, provide briefings, and arrange appointments for County officials and staff when they travel to Sacramento, California in furtherance of the County's state advocacy program.
- F. Prepare and deliver briefings and activity reports as needed, including an annual report summarizing services and results.
- G. Prepare and file, on County's behalf, such reports of lobbyist activity as may be required of the County by federal law, state law or administrative requirements.
- H. Develop (with the assistance of the Board's Director of Legislative Affairs) specific goals and objectives for the County's state advocacy program for the twelve months beginning each January 1, and the strategies necessary for their accomplishment.
- I. Participate in appropriate coalitions and working groups that help further the interests and goals of the County.
- J. Maintain liaison between the County and the County's State Legislative delegation and provide assistance to the delegation in any matter that furthers the objectives of the County's state advocacy program.
- K. Perform other related duties as mutually agreed upon.

- L. Meet regularly with the Director of Legislative Affairs to discuss legislative, budgetary and administrative strategies with respect to the best use of time/resources and development of priorities. "

Efforts of the Contractor shall be coordinated by the Director of Legislative Affairs. "Division of Labor" of the County's State Legislative Advocates may be altered based upon issues/contacts.

Reporting/Communication with County Officials

- A. Maintain contact with, and be accessible to County Supervisors and their staff members regarding state issues of interest to the County or each Supervisorial District.
- B. Maintain contact with, and be accessible to the County Administrative Officer, Administrative Office staff, and senior Group/Department managers regarding state issues of interest to the County.
- C. Communicate with the Board's Director of Legislative Affairs on a regular basis, via e-mail, conference call, or fax, on issues that are pertinent to the County, Board of Supervisors or the County Administrative Office.
- D. Copy County Administrative Office on all regular reports provided to Board's Director of Legislative Affairs and the Board of Supervisors.
- E. Provide Board's Director of Legislative Affairs with copies of all written communications sent on behalf of County (e.g., support/opposition letters to Legislative delegation).
- F. Provide legislative updates, and information on emerging state issues at a minimum of once per month, or more frequently based on legislative cycle.

2. Effective Dates

This contract will take effect on January 1, 2003 and shall continue in full force and effect until December 31, 2004, unless extended, modified, amended, or terminated as hereinafter provided. County shall have the option to extend this contract for two additional one-year periods by the giving of a written notice of extension to Contractor at least thirty (30) days prior to the date the contract would otherwise expire.

3. Termination

This contract may be terminated at any time by either party in writing, delivered to the other at least thirty (30) days prior to the desired termination date. The County Administrative Officer shall have the authority to exercise County's rights under this contract, including the right to give notice of termination on behalf of the County. County shall have the right in the case of breach of contract to terminate this contract immediately upon written notice to Contractor.

4. Compensation

- A. County shall pay \$9,000 monthly to Contractor for services under this contract.
- B. Contractor shall submit monthly invoices with an activity report that delineates the services provided.
- C. Contractor shall submit monthly invoices (not later than 30 days from the end of each month) to County Board's Director of Legislative Affairs with a copy of the required monthly activity report attached to the invoice.
- D. Any adjustment in compensation shall be set forth in a contract amendment approved by the parties.

5. Conflict of Interest

- A. The County recognizes and acknowledges that the Contractor may represent clients other than the County of San Bernardino and may render services as a registered lobbyist for other organizations, individuals and entities.
- B. The County's current and long-standing policy is that the Contractor does not undertake representation of any organization, individual or entity whose interests are in conflict with the interests of the County.
- C. In the event that the Contractor desires to undertake governmental advocacy on behalf of another organization, individual or entity, the Contractor will give the County written notice of such proposed employment, for the purpose of determining potential conflicts of interest. The notice shall specify the name and address of the party being represented, and the scope of work to be undertaken on their behalf. All information received shall be treated in confidence, and shall be returned to the Contractor upon making a determination as to the presence or absence of a conflict.
- D. If the County determines that a conflict exists because of the new representation the Contractor will not represent the subject organization, individual or entity with respect to those issue or interests as determined by the County.
- E. County recognizes that Contractor currently represents clients listed in Attachment A. In the event that issues arise with the Contractor where specific interests from existing clients might conflict with each other, the Contractor will give both clients written notice of such conflict, for the purpose of full disclosure. In the event a conflict is determined to exist, the Contractor, on a case-by-case basis after discussion with both clients, will remain neutral on the issue that is in conflict and shall subcontract for other representation.
- F. Contractor shall furnish an updated list of all current clients for submission to Board of Supervisors along with this contract.

6. Ethical Conduct

- A. Contractor shall adhere to the ICMA Code of Ethics as adopted by the County Board of Supervisors on August 10, 1999.
- B. Contractor shall promptly disclose detailed information regarding any financial misconduct, lobbying or campaign finance violations, litigation, bankruptcy, criminal convictions or filed charges as well as any administrative enforcement investigations or actions (including any such matters involving the California Fair Political Practices Commission or similar local, state agencies or federal agencies or entities) filed against or involving the Contractor during the term of the contract.

7. General Terms

- A. Independent Contractor. In the performance of the contract, the Contractor shall be an independent contractor and not an officer, employee or agent of the County. Contractor shall be responsible for all tax and other reporting requirements as an independent contractor.
- B. Contractor Primary Contact. Contractor must respond to County inquiries within two (2) business days.
- C. Change of Address. Contractor shall notify the County in writing of any change in mailing address within ten (10) business days of the change.
- D. Subcontracting. Contractor agrees not to enter into any subcontracting contracts for work contemplated under this contract without first obtaining written approval from the County. Any subcontracting shall be subject to the same terms and conditions as applies to Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.
 - a. Contract Assignability. Without the prior written consent of the County, this contract is not assignable by Contractor either in whole or in part.
 - b. Contract Amendments. Contractor agrees any alterations, variations, modifications, or waivers of the provisions of this contract shall be valid only when reduced to writing, executed and approved by the Board of Supervisors of the County.
- E. Termination for Convenience. As previously set forth, the County for its convenience may terminate this contract in whole or in part upon thirty (30) calendar days written notice. If such termination is effected, an equitable adjustment in the price provided for in this contract shall be made. Such adjustment shall provide for payment to the Contractor for services rendered and expenses incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue service unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) of all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

- F. Attorney Fees and Costs. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorneys' fees directly arising from a third-party legal action against a party hereto and payable under Paragraph 8. A. Indemnification
- G. Venue. The venue of any action or claim brought by any party to this contract will be the Superior Court of California, County of San Bernardino, Central District. Each party hereby waives any law or rule of the Court, which would allow them to request or demand a change of venue. If any action or claim concerning this contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to San Bernardino County.
- H. Jury Trial Waiver. Contractor and County hereby waive their respective rights to trial by jury for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either Contractor against County or County against Contractor on any matter arising out of, or in any way connected with this contract, the relationship of Contractor and County, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.
- I. Licenses and Permits. Contractor shall ensure that all necessary licenses and permits required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses and permits in effect for the duration of this contract. Contractor will notify County immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of this contract. Contractor shall be responsible for complying with all State and Federal laws and regulations related to the performance of services under this contract including all reporting requirements.
- J. Labor Laws. Contractor shall strictly adhere to the applicable provisions of the California Labor Code regarding the employment of apprentices; minimum wages; travel and subsistence pay; retention and inspection of payroll records; workers compensation; payment of wages. The Contractor shall forfeit to the County the penalties prescribed in the Labor Code for violations.
- K. Notification Regarding Performance. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this contract, the Contractor shall notify the County within one (1) working day, in writing and by telephone.
- L. Conflict of Interest. Contractor shall make all reasonable efforts to ensure that no County officer or employee whose position in the County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this contract or shall have any business relationship to the Contractor or officer or employee of the Contractor.
- M. Improper Consideration. Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer,

employee or agent of the County in an attempt to secure favorable treatment regarding this contract.

- N. The County, by written notice, may immediately terminate this contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition and termination right shall apply to any contract amendment, extension or other process or activity once the contract has been awarded.
- O. Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.
- P. Employment of Former County Officials. Contractor agrees to provide information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided shall include a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates, or employees of the business. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer, or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit, or Safety Management Unit.
- Q. Recycled Paper Products. The County has adopted a recycled product purchasing policy (11-10), which requires Contractors to use recycled paper for any printed or photocopied material created as the result of a contract with the County. The policy also requires Contractors to use both sides of paper sheets for reports submitted to the County whenever practicable. Contractor shall comply with County Policy 11-10 in performing services under this contract.
- R. Artwork, Proofs, and/or Negatives. All artwork, proofs, and/or negatives in either print or digital format used for services under this contract are the property of the County of San Bernardino. These items must be returned to the County of San Bernardino within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies.
- S. Ownership of Documents. All documents, data, products, graphics, computer programs; and reports prepared by Contractor pursuant to this contract shall be the property of the County upon payment for services. All such items shall be delivered to County at the completion of work under this contract, subject to the requirements of paragraph 7 E. Termination for Convenience. Unless otherwise directed by County, Contractor may retain copies of such items.
- T. Release of Information. No news releases, advertisements, public announcements or photographs arising out of this contract or Contractor's relationship with the County may be made or used without prior written approval of the County.

8. Indemnification and Insurance Requirements

- A. **Indemnification.** Contractor agrees to indemnify, defend and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising from Contractor's acts, errors or omissions and for any costs or expenses incurred by the County on account of any claim therefore, except where such indemnification is prohibited by law.
- B. **Insurance Coverage.** Without in any way affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract the following types of insurance with limits as shown:

- a. Workers' Compensation. A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

- b. Comprehensive General and Automobile Liability Insurance. This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).
- c. Errors and Omissions Liability Insurance – Combined single limits of \$1,000,000 and \$3,000,000 in the aggregate or

Professional Liability – Professional liability insurance with limits of at least one million dollars (\$1,000,000).

- C. **Additional Named Insured.** All policies, except for the Workers' Compensation and professional liability policies, shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insureds with respect to liabilities arising out of the performance of services hereunder.
- D. **Waiver of Subrogation Rights.** The Contractor shall require the carriers of the above-required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors.
- E. **Policies Primary and Non-Contributory.** All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

- F. **Proof of Coverage.** Contractor shall immediately furnish certificates of insurance to the County evidencing the insurance coverage, including the endorsements above required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the County. Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this contract, the Contractor shall furnish certified copies of the policies and all endorsements.
- G. **Insurance Review.** The above insurance requirements are subject to periodic review by the County. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized but not required, to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any such reduction or waiver for the entire term of the contract and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

9. Entire Contract

This is the entire contract between the parties. This contract may be modified or amended at any time by the mutual consent of the parties. Any such amendment or modification shall be in writing and become a permanent part of this contract. This contract may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

10. Notice

Any notice required by this contract shall be deemed sufficiently given or made if mailed, postage prepaid, to the appropriate party at their address, or at such other address as the party may designate in writing. Notice to County shall be given to County's Administrative Officer.

11. Right to Monitor and Audit

- A. **Right to Monitor.** The County shall have absolute right to review and audit all records, books, papers, documents, minutes, and other pertinent items as requested relating to this contract, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this contract and comply with any and all reporting requirements established by the County.

In the event the County determines that Contractor's performance of its duties or other terms of this contract are deficient in any manner, County will notify Contractor of such deficiency in writing or orally, and provide written confirmation within five (5) days thereafter. Contractor shall remedy any deficiency within forty-eight (48) hours of such notification, or County at its option, may terminate this contract immediately upon written notice, or remedy the deficiency and offset the cost thereof from any amounts due the Contractor under this contract or otherwise.

B. Availability of Records. All records pertaining to services provided and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this contract or until all pending County, State and Federal audits are completed, whichever is later.

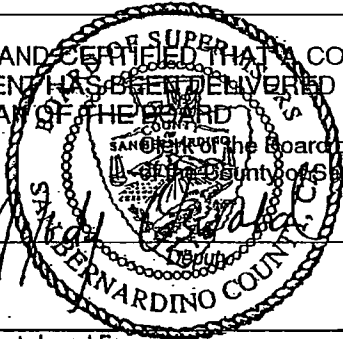
COUNTY OF SAN BERNARDINO

Fred Aguiar

Fred Aguiar, Chairman, Board of Supervisors

Dated: DEC 17 2002

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



of the Board of Supervisors of the County of San Bernardino.

By *M. [Signature]*

Approved as to Legal Form

Ron [Signature]

County Counsel

Date 12/13/02

Reviewed by Contract Compliance

▶

Date

Reviewed for Processing

▶

Agency Administrator/CAO

Date

PLATINUM ADVISORS, LLC
(Print or type name of corporation, company, contractor, etc.)

By *[Signature]*
(Authorized signature - sign in blue ink)

Name DARIUS ANDERSON
(Print or type name of person signing contract)

Title PRESIDENT
(Print or Type)

Dated: 12/6/02

Address 1215 K STREET, SUITE 1150
SACRAMENTO, CA 95814

ATTACHMENT A

LIST OF CLIENTS (Platinum Advisors, LLC)

The following is a list of clients that are currently being represented by the firm of Platinum Advisors, LLC:

1. 24 Hour Fitness
2. AB 2293 Coalition
3. Accenture
4. Ahmanson Land Company
5. Affordable Housing Collaborative
6. Affordable Housing Resources
7. AIDS Healthcare
8. Auto Nation
9. Best Buddies
10. BP America & its affiliated entities
11. Bulletin Display Company
12. Caliber Collision Centers
13. California Association of Health Facilities
14. California Coalition of Nurse Practitioners
15. California Forestry Association
16. California Healthcare Institute
17. California Nurse Midwives Association
18. California Prosecutors Association
19. California Travel Industry Association
20. Caremark RX, Inc.
21. CCC Information Services
22. CH2M Hill
23. Clear Channel Adshel International
24. City of Martinez
25. Delaware North Companies, Inc.
26. Dickstein & Merin
27. E & J Gallo Winery
28. Ewiiapaaya Band of Kumeyaay Indians
29. Financial Services Coordinating Council
30. Fireman's Fund
31. Gateway
32. GTech
33. General Motors
34. Hacienda La Puente School District
35. Hilmar Cheese Company
36. Interlott Technologies
37. Johnson & Johnson
38. Knauf Fiber Glass

39. KPMG
40. Lennar Communities
41. Los Angeles World Airports
42. The Lytton Band of Pomo Indians
43. McCarthy Building Companies & GKK Corporation
44. Microsoft Corporation
45. Napa Valley Vintners Association
46. Pacific Gas & Electric Company
47. Perkin Elmer Life Sciences
48. Personal Insurance Federation
49. Playa Vista
50. Port of Oakland
51. Recording Artists Coalition
52. Rite Aid Corporation
53. The Rumsey Indian Rancheria
54. R.A.M. Development
55. San Diego Unified Port District
56. SBC Telecommunications
57. Screen Actors Guild
58. Seisint, Inc
59. Sequoia Voting Systems
60. Shingle Springs Band of Miwok Indians
61. Sutter Health
62. Target Corporation
63. United Parcel Service
64. Working Rx
65. Yucaipa Valley Water District

TAB

B

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION

January 11, 2005
Continued from January 4, 2005

FROM: DAVID H. SLAUGHTER, Director
Real Estate Services Department

GARY PENROD, Sheriff
Sheriff's Department

SUBJECT: LEASE AGREEMENT WITH MORELAND FAMILY, LLC

RECOMMENDATIONS:

1. Approve a lease agreement, **Agreement No. 05-27**, with Moreland Family, LLC (Moreland) for an approximate 120,000 square foot prison facility for the Sheriff's Department (Sheriff) in Adelanto for a period of ten years commencing October 1, 2005 in the amount of \$39,991,720.
2. Authorize the use of contingencies in the amount of \$3,200,000 and direct the Auditor/Controller-Recorder to adjust appropriation in the amount of \$3,200,000, as detailed in the financial impact section, to enable the payment from the Sheriff to Moreland for the cost of construction of modifications mandated by the State Board of Corrections and County safety standards. (Four votes required)

BACKGROUND INFORMATION: In 1999, the Board approved hiring Rosser International, Inc. (Rosser) to prepare a report regarding the current and future capacity needs in the County's jails. Rosser projected that the 1999 daily average prison population of 4,900 inmates in San Bernardino County would nearly double by 2020 to approximately 9,300 inmates. As a result of the Rosser report, the Sheriff has continued to monitor inmate population and provide potential solutions to increase capacity as the population grows. In 2004, the daily average inmate population was estimated at 5,541 inmates, which is an increase of 66% over the ten-year period since 1994. Managing this burgeoning prison population has forced adverse consequences. Inmates are often required to sleep on the floor. Another dire consequence has been the need to release hundreds of felons prior to the end of their sentence on a regular basis to create prison space for new inmates. In the year 2000, the early release rate for felons averaged 641 inmates per month. As of August 2004, the year-to-date early release rate averaged 778 prisoners per month, which is a 21% increase in prisoners released compared to only four years earlier.

The Sheriff proposes a temporary solution to the problem of providing adequate inmate housing by leasing an existing prison in the Adelanto area. A High Desert location is preferred because 25% of the inmate population comes from that region. Two options were initially available; however, one was a facility owned by the City of Adelanto, which is unable to secure an early termination of its existing lease with the State Board of Corrections. The second location, the Maranatha facility owned by Moreland, is located at 9330-9438 Commerce Way and 16365 Beaver Road in Adelanto.

Page 1 of 4

cc: RES - Slaughter w/ agreement
Contractor c/o RES - Slaughter
w/ agreement
Sheriff - Penrod w/ agreement
IDS w/ agreement
AUD - Valdez w/ agreement
Risk Management
CC- Hinesley
Sheriff - Beemer
CAO - Kopp;Kratzke
File w/ agreement

kt

Record of Action of the Board of Supervisors

Agreement No. 05-27
APPROVED BY THE BOARD OF SUPERVISORS
SAN BERNARDINO COUNTY, CALIFORNIA

MOTION

J. RENEE BUSTIAN, CLERK OF THE BOARD

BY

DATED: January 11, 2005



AYE SECOND AYE
4 5

ITEM 049

The Sheriff requested the Real Estate Services Department (RESA) negotiate a lease for the Maranatha correctional facility.

On December 14, 2004, the Board granted approval for RESA to negotiate to lease the Maranatha facility and return to the Board for approval of that lease. RESA has, in conjunction with the Sheriff, negotiated a ten-year lease of the facility that includes an option to purchase the facility at specific times and at specific dollar amounts during the ten-year term. The landlord has agreed to complete all identified deferred maintenance items at his cost, and to construct improvements to the facility necessary to meet the standards required by the Board of Corrections, as well as the County's safety standards for housing inmates, for which the County will reimburse the landlord in an amount not to exceed \$3,200,000. Approval of the lease authorizes the County Administrative Officer to approve the plans and specifications for the improvements and to approve the cost to construct such improvements in an amount not to exceed \$3,200,000.

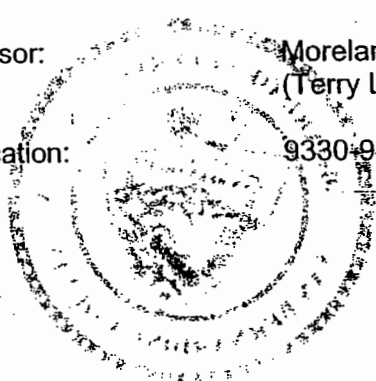
An appraisal of the land, prison, and other buildings of the Maranatha facility is underway and will be finished in approximately 45 days. The appraisal will be used to substantiate the value of the facility in the event the County should elect to exercise its option to purchase during the ten-year term of the lease. The agreement allows for the County to exercise its option to purchase within 60 days of Board approval for \$28,000,000 plus the cost of the County required modifications not to exceed \$3,200,000. If exercised within the 60-day period, the close of escrow would be no later than January 2, 2006 for a total purchase price not to exceed \$31,200,000. If the contract is not exercised within this first 60-day period, the option to purchase can be next exercised beginning in the eighth year.

The current estimated cost to construct a new 3,000-bed detention facility is approximately \$260 million or \$86,667 per bed. The County has the option to purchase the Maranatha facility for \$31.2 million, which includes a \$28 million purchase price plus an initial investment by the County of approximately \$3.2 million for modifications mandated by the State Board of Corrections and County safety standards. The \$31,200,000 equates to \$47,273 per bed for 660 beds. While there are differences between the functional characteristics and security level of this facility compared to the proposed, state-of-the art 3,000-bed facility, the value and the immediate availability of the Maranatha facility offered for lease and/or purchase is favorable compared to the cost per bed and the time necessary to construct a new facility. The Maranatha facility will provide needed additional jail capacity in the County at approximately 55% of the per bed cost of constructing a new facility and immediate availability to house felons now being released. In addition to the rent, the Sheriff estimates annual operating costs at approximately \$15.1 million, with potential revenue offset for housing federal prisoners of \$7.2 million for an estimated net operating cost of \$7.9 million.

The lease terms are summarized as follows:

Lessor: Moreland Family, LLC
(Terry L. Moreland, Owner)

Location: 9330-9438 Commerce Way and 16365 Beaver Road, Adelanto



BOARD OF SUPERVISORS
LEASE AGREEMENT WITH MORELAND FAMILY, LLC
January 4, 2005
Page 3 of 4

Size: Approximately 120,000 square feet of prison space to house approximately 660 inmates, plus grounds, parking, a prisoner recreation area, and a Butler building for storage, all of which is located on four contiguous parcels totaling approximately 13.25 acres

Term: Ten years commencing October 1, 2005, or earlier if improvements required by the County are completed and accepted by the County

Options: Two five-year options to extend the term and an option to purchase the facilities during the initial ten-year term

	Monthly <u>rent</u>	Annual <u>rent</u>	Estimated annual property <u>taxes and insurance</u>	Total <u>annual costs</u>
Rent:	\$316,181	\$3,794,172	\$205,000	\$3,999,172*

*Equates to approximately \$16.60 per bed per day

Annual increase: Annual increases in property taxes and insurance premiums; rent is fixed over the ten-year term.

Improvement costs: Not to exceed \$3,200,000 to be paid in full to the landlord upon completion and acceptance by the County

Custodial: Provided by County

Exterior maintenance: Provided by County

Interior maintenance: Provided by County

Utilities: Provided by County

Right to terminate: The lease cannot be terminated except for cause during the initial ten-year term except at the end of the seventh year the County may give notice to terminate at the end of the eighth year.

Parking: Sufficient for County needs

REVIEW AND APPROVAL BY OTHERS: This item has been reviewed by County Counsel (Rex Hinesley, Chief Deputy County Counsel, 387-5480) on December 28, 2004; Sheriff (Richard Beemer, Captain, 387-3637) on December 28, 2004; and the County Administrative Office [Daniel R. Kopp (387-3828) and Vicki Kratzke (387-8906), Administrative Analysts] on December 28, 2004.

FINANCIAL IMPACT: The total cost of this ten-year agreement is \$43,141,720 (\$39,991,720 for rent payments plus an amount not to exceed \$3,200,000 for certain modifications to this prison facility). The total cost in 2004-05 will not exceed \$3,200,000. Other costs associated with this lease include interior and exterior maintenance, custodial and utility expenses estimated at \$240,000 per year plus reimbursement to the Landlord for property taxes and insurance premiums estimated at \$205,000 per year. Lease payments will be made from the Rents budget (AAA RNT) and reimbursed from the Sheriff budget (AAA SHR). Other costs will be paid from the Sheriff budget.

BOARD OF SUPERVISORS
LEASE AGREEMENT WITH MORELAND FAMILY, LLC
January 4, 2005
Page 4 of 4

The use of \$3,200,000 of contingencies is requested to enable the payment to Moreland for the cost of construction of modifications mandated by the State Board of Corrections and County safety standards. Requested budget adjustments are as follows:

AAA SHR SHR 200 2905	Rents and leases	Increase	\$3,200,000
AAA CNR CNR 600 6000	Contingencies	Decrease	\$3,200,000

Annual lease costs are as follows:

<u>Ten-year term</u>	<u>Annual lease cost</u>	<u>Estimate of other annual costs associated with this lease</u>
10/1/05 – 9/31/15	\$3,794,172	\$445,000

COST REDUCTION REVIEW: The County Administrative Office has reviewed this agenda item, concurs with the Sheriff's and RESD's proposal, and recommends this action based on the Sheriff's need to be in compliance with court-mandated prisoner housing standards and, to the extent possible, eliminate the early release of felons due to over-crowding. The lease cannot be terminated except for cause.

SUPERVISORIAL DISTRICT: First

PRESENTER: David H. Slaughter, Director, 387-7813

MR: 387-7836

if: 387-7819

TAB

C

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION

April 5, 2005

FROM: DAVID H. SLAUGHTER, Director
Real Estate Services Department

GARY PENROD, Sheriff
Sheriff's Department

SUBJECT: PURCHASE OF THE MARANATHA CORRECTIONAL FACILITY IN ADELANTO

RECOMMENDATIONS:

1. Approve exercising the option to purchase the Maranatha Correctional Facility (MCF), consisting of approximately 120,000 square feet of prison space, grounds, parking, prisoner recreation area, and a storage building located on approximately 13.25 acres, in Adelanto in the amount of \$28,000,000.
2. Authorize and direct the Director of the Real Estate Services Department (RES D) to give the appropriate notice of County's intent to exercise the option to purchase and to execute escrow instructions and any other documents necessary to complete this transaction; including Seller's disclosure of any commission bonuses, finder's fees or other compensation paid to third parties as a result of the sale of the property.
3. Find the acquisition of the 9330-9438 Commerce Way and 16365 Beaver Road, Adelanto prison building and related facilities is exempt from the California Environmental Quality Act (CEQA).
4. File a Notice of Exemption.
5. Direct staff to conduct an economic impact analysis relative to continued operation of this type of a facility to include comparisons with other cities and/or counties.

BACKGROUND INFORMATION: On January 11, 2005, the Board approved a 10-year lease agreement (No. 05-27), with options to purchase, with Moreland Family, LLC (Moreland) for MCF located on approximately 13.25 acres in Adelanto. MCF consists of approximately 120,000 square feet of prison space, grounds, parking and a prisoner recreation area located at 9330-9438 Commerce Way, and a 6,360 square foot storage building located on a contiguous parcel at 16365 Beaver Road. The lease agreement contains a provision that allows the County to exercise an option-to-purchase within 60 days of Board approval of the lease agreement. This initial option-to-purchase was set to expire March 11, 2005, but due to delays in finalizing the appraisal, Moreland agreed to extend this option period to April 12, 2005. By exercising this initial option, the County can acquire MCF for \$28,000,000 plus County-required modifications at a cost not to exceed \$3,200,000 for a total not-to-exceed price of \$31,200,000. If exercised within the extended time period, the close of escrow would occur not later than January 2, 2006. If this initial option is not exercised, the next opportunity to exercise an option-to-purchase is in the eighth year of the lease.

On March 1, 2005, the Heath Group completed an appraisal of MCF with a date of value as of October 1, 2005, which is the estimated date for acquisition or commencement of the lease. The purchase price of \$28,000,000 is supported by the appraisal.

Page 1 of 3

cc: RES-Slaughter
Sheriff Admin.-Penrod; Casey
Co. Counsel-Hinesley
LUSD-Scott
CAO-Kopp; Rozko
Filed @ RES

ml

Record of Action of the Board of Supervisors

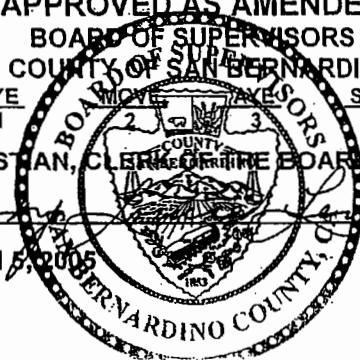
APPROVED AS AMENDED
BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

MOTION AYE NO ABSENT SECOND AYE
1 2 3 4 5

J. RENEE BASTIAN, CLERK OF THE BOARD

BY *[Signature]*

DATED: April 5, 2005



**BOARD OF SUPERVISORS
OPTION TO PURCHASE MARANATHA CORRECTIONAL FACILITY**

April 5, 2005

Page 2 of 3

Correctional facilities currently in use within the County are inadequate to meet the growing prison population, which has resulted in the early release of hundreds of felons on a monthly basis. As of August 2004, the year-to-date early release rate averaged 778 prisoners per month. The prison population is expected to continue to escalate as the overall County population continues to grow, which, in turn, creates the need for more correctional facilities in the County system. Leasing this facility provides a temporary solution to current inadequate inmate housing; however, acquiring and owning MCF will provide greater control and flexibility that will allow the Sheriff to maintain and manage this facility in a manner that will best meet the needs of the County. Furthermore, this triple net lease requires the County to pay an annual rent of \$3,794,172 plus all expenses, including utilities, maintenance, property taxes and insurance. As a County-owned facility, the annual rent as well as the costs for property taxes and insurance, currently estimated at \$205,000 per year, would be eliminated. The acquisition of this facility also allows the use of one-time funds, thereby eliminating the need to appropriate funds annually during the term of the lease.

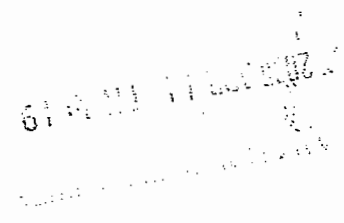
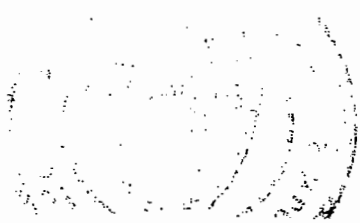
In accordance with the terms of the lease agreement, the next opportunity for the County to acquire MCF by exercising an option-to-purchase occurs in the eighth year of the lease term with a close of escrow at the end of the eighth year at a purchase price of \$12,500,000. At that point, the County would have already expended \$31,993,376 for rent, property taxes and insurance. Without considering any increases that would occur in the costs for property taxes and insurance, nor the County's cost of funds during that eight-year period, the expenditure of \$28,000,000 at this time provides a long-term savings to the County estimated to be in excess of \$16.5 million.

The lease agreement requires the landlord to complete all identified deferred maintenance items at his cost, and to construct improvements and modifications to the facility necessary to meet the standards required by the Board of Corrections, as well as the County's safety standards for inmate housing prior to the close of escrow. As previously approved by the Board on January 11, 2005, the County Administrative Officer will approve the plans and specifications for the improvements and modifications in an amount not to exceed \$3,200,000. This will be paid in addition to the purchase price of \$28,000,000.

The County is required to comply with CEQA for property acquisitions. This acquisition is exempt from CEQA in accordance with Section 15061(b)(3) of the CEQA Guidelines because the County's use of this facility will not differ significantly from its current use.

REVIEW AND APPROVAL BY OTHERS: This item has been reviewed by County Counsel (Rex Hinesley, Chief Deputy County Counsel, 387-5480) on March 17, 2005; the Sheriff (Dennis J. Casey, Captain, 387-3649) on March 17, 2005; Land Use Services Department (Randy Scott, Advance Planning Division Chief) on March 23, 2005; and the County Administrative Office [Daniel R. Kopp (387-3828) and Laurie Rozko (387-8997), Administrative Analysts] on March 29, 2005.

FINANCIAL IMPACT: The total cost to acquire this prison facility is \$28,020,000, which includes \$20,000 for title charges, escrow fees, and other costs associated with the acquisition. The transaction will be executed in 2005-06. In addition to the purchase price, a \$3,200,000 general fund allocation for the cost of County-mandated improvements was appropriated on January 11, 2005 along with the Board's approval of the lease agreement.



BOARD OF SUPERVISORS
OPTION TO PURCHASE MARANATHA CORRECTIONAL FACILITY

April 5, 2005

Page 3 of 3

Transfers totaling \$28,020,000 will be executed in 2005-06 to enable the payment to Moreland for the cost to acquire MCF. This amount will be funded from Proposition 172 funds (\$6,000,000), a one-time general fund allocation (\$19,020,621), and the Sheriff's budget (\$2,999,379). The transfer from the Sheriff's Department budget is equal to the nine-month cost of leasing MCF plus property taxes. This amount was included in the Sheriff's 2005-06 local cost target for MCF leasing costs. After 2005-06, \$2,999,379 will be available for use at the Board's discretion. By purchasing MCF, the County will realize annual savings of \$3,999,172 (leasing costs of \$316,181 per month x 12 months plus \$205,000 per year for property taxes).

COST REDUCTION REVIEW: The County Administrative Office has reviewed this agenda item, concurs with the Sheriff's and RESD's proposal, and recommends this action based on estimated savings to the County in excess of \$16.5 million achieved by acquiring instead of leasing MCF.

SUPERVISORIAL DISTRICT(S): First

PRESENTER: David H. Slaughter, Director of RESD, 387-7813

MR: 387-7836

mf: 387-7819

TAB

D

Project:	Maranatha Correctional Facility	Page:
Agent	DIARY NO CIP	1
Date		
10/27/04	Met w/ Sheriff's Dept (Burner, Cates, Wellatt, Jenkins, Bredt) - (AO (Bozko) to discuss prison options in Adelanto - 2 choices - Maranatha - City of Adelanto	
	Sherriff prefers city due to stronger construction.	
10/28/04	Examined both properties on Pub Lec - prepared summary sent to Jim. Sense sherriff likes City facility, Posthaus likes Maranatha	
10/29/04	2pm mtg w/ sherriff - presented summary - spoke w/ T. Moreland about getting out of lease - Req. copy of mail report - Faxed.	
11/14/04	Reviewed options / issues	
11/18/04	Inspected Maranatha facility w/ D.S., J.M. Cates, Jenkins, Wellatt. Moreland - have begun prelim negotiations - option to purchase, lease, triple net. City of Adelanto - Bill Ayala - sup this acty will defend early term of state lease. Our county counsel doesn't believe it can be term early. Bill to speak to lobbyist - get back to us after 12/6/04.	
10/22/04	mailed RFP for prison appraisal. Offer to fax to list of 11 appraisers (prison experience per A.I.) on 11/23/04	
12/13/04	Mtg w/ sherriff to review update to Board for 12/14/04 board mtg. Engaged firm from AZ to do prison appraisal.	
12/15/04	Cancelled AZ firm - couldn't get Calif license for 2-3 wks plus extended date from 45 to 60 dup. Engaged T Heath out of San Diego - faster turn, full, complete report, has license.	
10/20/04	Advised Maranatha to be on 1/4/04 board.	
11/16/04	lease - board term underway. Moreland wants 1/4 date for state negotiations. Got agenda for 1/4 w/ board term draft. Won't wait for appraisal to review for original price.	

11/16/04
 NE Moreland sherriff
 spoke w/ J. Moreland
 he wants 1/4 date
 for 1/4 w/ board term
 draft. Won't wait for
 appraisal to review for
 original price.

Project:

Correc Facility

Agent

Date

DIARY

Page:

2

12/22/04

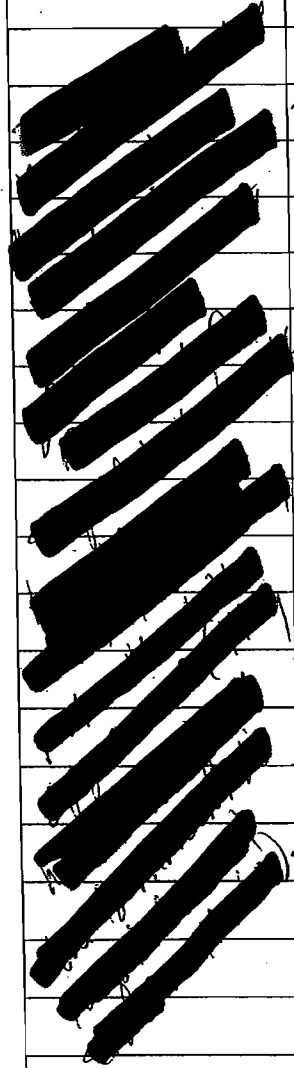
Sent prelim contract to Mr Moreland by express
Postnus office says can hold board item to
1/11/04 since Sheriff not here. Contract terms from

12/27/04

Moreland called Postnus - Postnus ^{Dave Sinayvita} said will go to
board 1/4/04, but may have to pull item

12/28/04

Finalized board item - contract. Brian McCormick's
office (Cheryl) called, requested copy of contract for
Cheryl to pick up, gave to Lonnie Cranlund who will go
to Sheriff (huh?) Told contract not final. Told Dave



called Con Beemer who says McCormick + Cranlund
are friends - Beemer says have them call him. Cheryl
called again for McCormick, told Moreland was
client of Cranlunds + needed contract to get
signatures in Sacramento. Asked in what
capacity they are clients - told affiliated.
(huh?) Told Cheryl contract was that final -
do not release to private citizens (no board
approval yet) + we are working hard-hand with
Sheriff - will take care of it. Don't need
sig in Sacramento - have made arrangement
for Moreland's signature. Don't need B. Cranlund
or wife to take contract to Sheriff or Sacramento
sent final contract w/ pagination problems
to Moreland + Jim Thompson + faxed Exhibit
A (site plan, legal descrip). About 4:30 pm Tim
Thompson called + said option to purchase was
wrong - County not to get option for 1st 6 yrs.
Told him I had never heard that. Said it was
discussed. Asked w/ who - told Postnus. Work
not sent to us. Told Tim had to renew with
Dave + Rev. called Dave (at Tag) + Rev.

Agent _____
 Date _____ DIARY

12/28 cont. Dave says never heard of option beginning in 6th year. Sent final contract to Tim Moreland at 7:58pm (corrected pagination). Tim was to have Moreland call me with explanation of change in option date - didn't call by 5pm.

12/29/04 Doyle will meet w/ appraisers - sent out inspection info. Doyle wants large rooms subdivided. May have enough money in \$3.2 million - if not will have to go to bank.

1/3/05 Moreland decided to null void addendum to exercise option in yr 6 - does not want to present to Board 1/4/05. Spoke w/ Rev - wanted to make sure it is understood that we may never amend to different purchase option. Tim Thompson says they understood that completely in phone conversation 1/3/05.

1/5/05 Wendy delivered contract for Fed prison @ CAC. Carolyn Bondoc not responsive to offer expense info.

Seq of Events for Board Item:

12/20 Told to do Board Item for 1/4 by Dave via Postmus

12/22 Sign on board item w/o final contract. Dave final to req. w/o time, so can be at 1/4 board. Postmus cancel 1/4 - said will ^{wait so period + Dave} walk board - will so 1/11.

12/27 Back in for 1/4 board! Worked contract w/ Dave - ~~did not~~ Rec'd terms from Dave.

12/29 Finalized, drove to L. Junction to meet Moreland employee for contract sig pages

1/4 Pulled (continued board item).

1/4/05 - 5pm Spoke w/ Tim - asked if would consider 10 yrs w/ out w/ 1 yr notice after 5 yrs - NO, no way. Said sheriff + Postmus knew needed minimum. Asked if had 6 mos w/ state contract. NO.

Project:

Mariano The - Delinquent Correctional Facility

Agent

Page:

Date

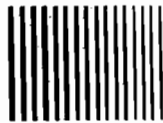
DIARY

4/20/05

Met w/ Laurie Savage, Randy + Don Munnitt @ Prism - reviewed program, needs + PFI list

4/26/05

Randy called - request to change wt buckets to stainless steel is no problem, but want blow-wt buckets which requires complete replacement of all the chases + painting etc. Very costly. Randy is going to delineate the cost of that as a separate item so we can examine any costs over \$3,000,000



John Yehms 741-4801-2111
OLD REPUBLIC
TITLE COMPANY

~~Brad Mitchell~~

MR. Mc Cormick

Grandson - affiliated
with Merrill

Ronnie is ex-wife
Signed contract to



Riverside/San Bernardino

(909) 787-4980 • (800) 223-4725

Palm Desert

(800) 845-1788 • (760) 318-0452

Palm Springs

(760) 318-0452

Temecula

(909) 695-0318

TAB

E

1.0 INTRODUCTION

Mr. Doyle Jenkins, Maintenance Superintendent with the County of San Bernardino, authorized Clayton Group Services, Inc. (Clayton) to provide a follow-up fungal evaluation for the Maranatha Correctional Facility located at 9438 Commerce Way in Adelanto, California. Clayton understands that this evaluation was requested to evaluate the building conditions for a potential real estate transaction. Clayton completed a Phase I fungal evaluation of this facility on September 1, 2004 and issued a report on September 29, 2004 (Clayton Report No. 80-05522.00).

Mr. John McGarrigle, Industrial Hygienist with Clayton, conducted this follow-up evaluation on October 18, 2004. Mr. Jenkins provided site access and background information in connection with the evaluation.

In conducting this evaluation, Clayton performed the following tasks:

- Conducted a walkthrough visual and destructive inspection to identify readily apparent visibly moldy and/or water stained/damaged construction and finishing materials associated with the subject water incursion incidents. San Bernardino County Sheriff's Department assisted with the destructive testing.
- Conducted direct-reading measurements of relative moisture content in hygroscopic construction and finishing materials.
- Collected tape-lift samples of suspect fungal growth to confirm the presence or absence of suspect visible fungal material.

Supporting information is provided in the following appendices:

- Appendix A Results of Tape-lift Samples
- Appendix B Laboratory Documentation

2.0 DESCRIPTION OF FACILITY

The Maranatha Correctional Facility is a single-story structure that covers an area of approximately 100,000 square feet of floor space. The facility was reportedly constructed in 1997. The facility has reportedly been subject to water-intrusion from numerous leaks from plumbing lines, roof leaks, and from maintenance activities (e.g., floor cleaning). Clayton's walk through inspection included the four day rooms, kitchen and bakery (an area of approximately 8,000 square feet).

3.0 METHODS AND MATERIALS

3.1 TAPE-LIFT SAMPLES

Clayton collected tape-lift samples for the presence of fungal material. PK-Jarvis Microbiology, LLC, in Novi, Michigan, an American Industrial Hygiene Association (AIHA) accredited laboratory, conducted the analysis.

3.2 MOISTURE MEASUREMENTS

Clayton conducted moisture measurements using a Delmhorst™ Model BD-2100 moisture meter on the gypsum wallboard scale.

4.0 OBSERVATIONS

Clayton conducted a walkthrough inspection and destructive testing limited to specific areas previously inspected. It was reported by Mr. Jenkins and other County of San Bernardino parties that considerable painting had been conducted in areas where suspect visible mold had been previously observed during the original visit on September 1, 2004. Clayton observed a number of inmates white washing walls throughout the facility.

Clayton observed that the tile grout was discolored and eroded throughout the kitchen area.

4.1 KITCHEN - EAST FOOD PREPARATION PONY WALL

Pony Wall Service Hatch

Once the pony wall service hatch was opened, Clayton observed dust, debris and approximately three-square inches of suspect visible fungal growth on gypsum wallboard. Metal studs and piping were observed to be rusted (see Photographs 1 and 2). The results of Clayton's moisture measurements in the gypsum wallboard indicated the presence of elevated moisture content. It was reported by Mr. Jenkins that this area had been cleaned.

Perimeter Tile Cove Base

Clayton observed that the tile grout was discolored and eroded in places. Two previously damaged perimeter tiles were removed from the center of the pony wall to ascertain the condition inside the pony wall. Clayton observed a wood frame at the base of the wall running the length of the pony wall onto which the tiles were secured. Photograph 3 illustrates that part of the wood had disintegrated. Clayton observed dust, debris, a plastic drink bottle, stagnant water, and painter's masking tape inside the pony wall (see Photographs 4 and 5). In addition, the metal studs and piping were observed to be rusted. Clayton conducted moisture measurements in the gypsum wallboard that indicated the presence of elevated moisture content. Clayton observed the wooden frame as having greater than 4 square inches of suspect visible fungal growth.

Clayton collected swab and tape-lift samples from this location.

4.2 KITCHEN - WEST FOOD PREPARATION PONY WALL

Perimeter Tile Cove Base

Clayton observed that the tile grout was discolored and eroded in places. Two previously damaged perimeter tiles were removed from the pony wall to ascertain the condition inside the pony wall. Clayton observed a wood frame at the base of the wall running the length of the pony wall onto which the tiles were secured. Photograph 6 illustrates that part of the wood had disintegrated. Clayton observed dust, debris, and stagnant water inside the pony wall. In addition, greater than 3 square inches of suspect visible fungal growth was observed on gypsum wallboard and on the wood frame. The metal studs and piping were also observed to be rusted.

4.3 JANITORIAL STORAGE

Clayton observed that the sealant surrounding the janitor's sink was eroded in places exposing insulation and gypsum wallboard (see Photograph 7). The sink itself was cracked and chipped in a number of areas. Clayton observed approximately 6 square inches of suspect visible fungal growth on the plastic sheeting secured to wall. Clayton removed a single, previously damaged, tile from the cove base next to the sink unit. Clayton observed a length of wood ran the length of the cove base that had disintegrated from water saturation. Clayton observed greater than 3 square inches of suspect visible fungal growth on the wood and on the gypsum wallboard (see Photograph 8).

Clayton also observed the metal platform in the janitorial supply cage was rusted.

4.4 LAUNDRY ROOM

Clayton observed that gypsum wallboard on the pony wall to the left of the laundry machines was damaged and had suspect visible fungal growth. The cinder block wall behind the laundry machines was also observed to have suspect visible fungal growth. Photographs 9 and 10 illustrate these issues.

5.0 RESULTS

5.1 TAPE-LIFT SAMPLES

Appendix A presents the results of the tape-lift samples for fungal material. The tape-lift sample taken on the gypsum wallboard of the kitchen east pony wall confirmed the presence of *Stachybotrys*, *Aspergillus/Penicillium*, *Chaetomium* ascospores and ascomata. *Stachybotrys* is a tertiary colonizer and generally indicates long-term water intrusion.

The tape sample from the wood frame exposed from destructive testing of a base cove tile to the right of the sink in the janitorial storage area confirmed the presence of

Stachybotrys and *Aspergillus/Penicillium*-like hyphae and conidiophores, and a few *Memnoniella* spores.

6.0 CONCLUSIONS AND RECOMMENDATIONS

Based on the findings of the evaluation described above, Clayton offers the following recommendations:

General Recommendations

- Determine the source of water intrusion in the water-impacted materials and repair the sources of leaks allowing water to impact interior building materials.
- Retain a qualified, independent, microbial remediation contractor to remove water-impacted and visibly moldy building materials in the living quarters and kitchen. **Materials covering an area of greater than ten (10) square feet with suspect visibly moldy materials should be remediated under containment procedures. All personnel performing remediation of microbially contaminated materials must use appropriate personal protection equipment (PPE).**
- Perform the remediation activities identified in this report under the attached written specifications that describe appropriate practices and procedures for the removal of fungal contaminated materials, in accordance with the guidelines contained in the U.S. Environmental Protection Agency (USEPA) document entitled *Mold Remediation in Schools and Commercial Buildings* (March 2002). Written specifications should include methods to prevent personal exposures to fungi and the dissemination of fungal spores from remediation work areas into adjacent areas of the residence during remediation. **Note that the asbestos-containing status of all building materials that will be disturbed as a result of the contractor's activities must be verified prior to the start of remediation.**
- Retain an environmental consultant to perform a thorough post-remedial final visual inspection of work areas and post-remediation air sampling.

6.1 SITE SPECIFIC RECOMMENDATIONS

Do the visibly moldy gypsum board materials identified by Clayton in the Maranatha Correctional Facility need to be removed? The answer to this question is unequivocally, yes. Reasons for this include the following:

1. International Consensus

It is currently international consensus that the occurrence of atypical visible mold growth in buildings should be remediated, due to health and material integrity effects (e.g., United States Environmental Protection Agency, Health and Welfare Canada, World Health Organization). The reason for this is the emergence of a broad body of literature (e.g., Commission of the European Communities, Johanning, *et. al*) associating dampness and mold growth in buildings with disease, including upper respiratory distress and the exacerbation of existing respiratory conditions. When visible mold growth occurs on

porous building materials, such as gypsum board, the affected materials must be removed from the building due to the ineffectiveness of past attempts to clean such materials in-place (American Conference of Governmental Industrial Hygienist, Health and Welfare Canada).

2. Statutory Requirement

The State of California administers its own Occupational Safety and Health program (Cal/OSHA) and promulgates the standards that apply to state and private sector employees in California. It is the policy of Cal/OSHA to investigate all complaints or referrals alleging that workplace indoor air quality is injurious to the health of building occupant-employees, or a report of serious injury or illness, or serious exposure involving workplace indoor air quality. A "valid" indoor air quality complaint is a complaint, which alleges that indoor air in a non-industrial work environment (e.g., the Maranatha Correctional Facility) is hazardous to the health of a building occupant-employee.

Title 8 of the California Code of Regulations, General Industry Safety Orders, Section 5141 (Title 8 CCR Section 5141) requires employers to prevent harmful exposures to airborne contaminants. This section of the law has two basic applications. The first is in situations in which an established chemical permissible exposure limit (PEL) has been met. The second, which is more relevant to the Maranatha Correctional Facility, is harmful exposure, which is not chemical in nature (i.e., fungal bioaerosols).

For indoor air quality investigations, Cal/OSHA will provide citations for violations of the law under Title 8 CCR Section 5141 when no PEL exists for the hazard in question, but the employer has failed to prevent a non-chemical harmful exposure, including exposure to airborne mold. In addition, in accordance with the provisions of Title 8 CCR Section 334, Cal/OSHA citations for exposure to airborne mold (which is recognized by international consensus as being capable of causing serious physical harm) are generally classified as serious.

3. Legal Liability

A building creates a web of legal relationships between builders, owners, insurance companies, tenants, and just about anyone who has a property interest in, works on, or uses the building. These relationships are based on legal duties, the most important of which is the obligation of all parties to act with reasonable care. The failure to act with reasonable care can result in liability for negligence.

The law imposes a warranty of habitability on lessors, and tenants with leases also have contractual rights. Indoor air quality problems and building-related illness caused by the presence of extensive indoor mold growth can create a "constructive eviction", allowing the tenant to vacate the premises and cancel the lease. Even more potentially costly, tenants can also sue for personal injury based on negligence.

Indoor air quality problems arising from mold contamination are particularly amenable to personal injury lawsuits based on negligence because the conditions that allow for building-related illness from mold exposure (e.g., water damage and consequential mold growth which has not been remediated) necessarily requires negligence. The party primarily liable is the building owner; however, liability can spread throughout the web of the building's legal relationships. The County of San Bernardino may wish to seek

legal advice in connection with the potential legal liabilities which could be associated with the water damage and visibly moldy building materials observed inside the Maranatha Correctional Facility.

Clayton, recommends the following remediation activities be performed by the microbial remediation contractor:

General Recommendations

- Conduct a destructive inspection for all areas where there are indications of water intrusion and the potential for suspect visible mold to be hidden inside of the wall cavity.

Kitchen Area

- Remove and replace the floor tiles and cove base tiles from the kitchen area.
- Remove the gypsum wallboard, wood frame and the debris from inside both kitchen pony walls. Determine and remedy the source of the water intrusion.
- Re-secure the kitchen floor drains.

Janitorial Storage Area

- Remove the gypsum wallboard and plastic sheeting surrounding the janitorial sink.
- Remove and replace the floor tiles, cove base tiles and wood frame in the janitorial storage area.
- Remove and replace the janitorial sink.
- Determine and remedy the source of the water intrusion into the janitorial storage area.

Laundry Room

- Remove the gypsum wallboard with visible suspect fungal material on the pony wall to the left of the laundry machines.
- Clean and remove the suspect visible fungal material from the cinder block wall behind the laundry machines.

7.0 REFERENCES

United States Environmental Protection, *Agency Building Air Quality: A Guide for Building Owners and Facility Managers*, Washington DC, 1991.

Canadian Federal Provincial Advisory Committee on Environmental and Occupational Health, *Fungal Contamination in Public Buildings: A Guide to Recognition and Management*, Department of National Health and Welfare: Ottawa, Canada, 1989.

World Health Organization *WHO Regional Publications European Series, No. 31: Indoor Air Quality: Biological Contaminants: Report on WHO Meeting*, WHO: Copenhagen, Denmark, 1988.

Report No. 12: Biological Particles in Indoor Environments, Commission of the European Communities; Luxembourg, 1994.

Johanning, E., Jarvis, B.B., and Morey, P.R., Clinical-Epidemiological Investigation of Health Effects Caused by *Stachybotrys atra* Building Contamination. In: *Indoor Air '93, Proceedings of the 6th International Conference on Indoor Air Quality and Climate*. Vol. I. Health Effects. Helsinki, 1993.

American Conference of Governmental Industrial Hygienists Bioaerosols Committee, Guidelines for the Assessment of Bioaerosols in Indoor environments, ACGIH: Cincinnati, Ohio, 1989.

Report prepared by:



David S. Martinez, CIH
Senior Industrial Hygienist
Occupational Health and Safety

Report reviewed by:



Martin Rose, CIH
Senior Consultant
Occupational Health and Safety

October 27, 2004

PHOTOGRAPHS

Maranatha Correctional Facility, Adelanto California



Photo 1 Pony wall east, service hatch



Photo 2 Inside pony wall east

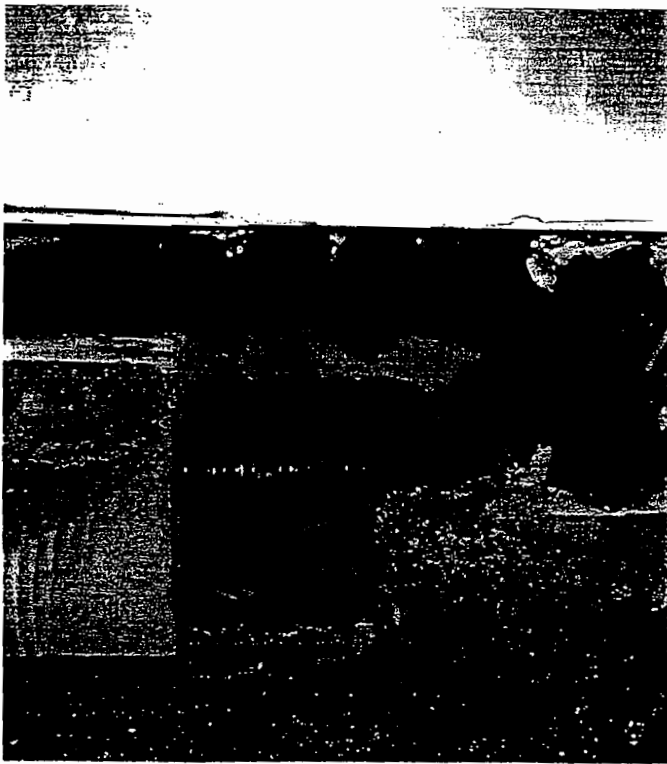


Photo 3 Pony wall east, wood frame

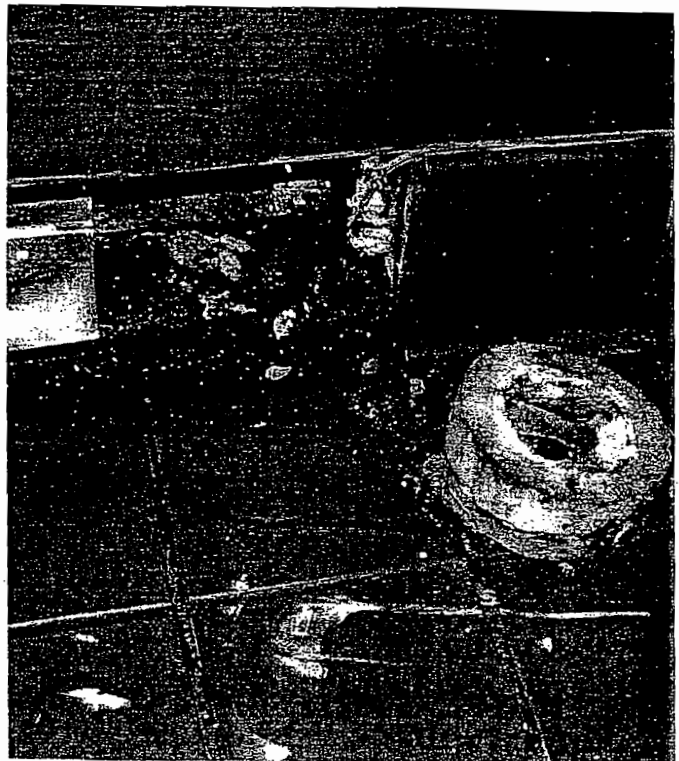


Photo 4 Debris from inside pony wall east

Maranatha Correctional Facility, Adelanto California



Photo 5 Inside pony wall east



Photo 6 Inside pony wall west



Photo 7 Janitorial sink

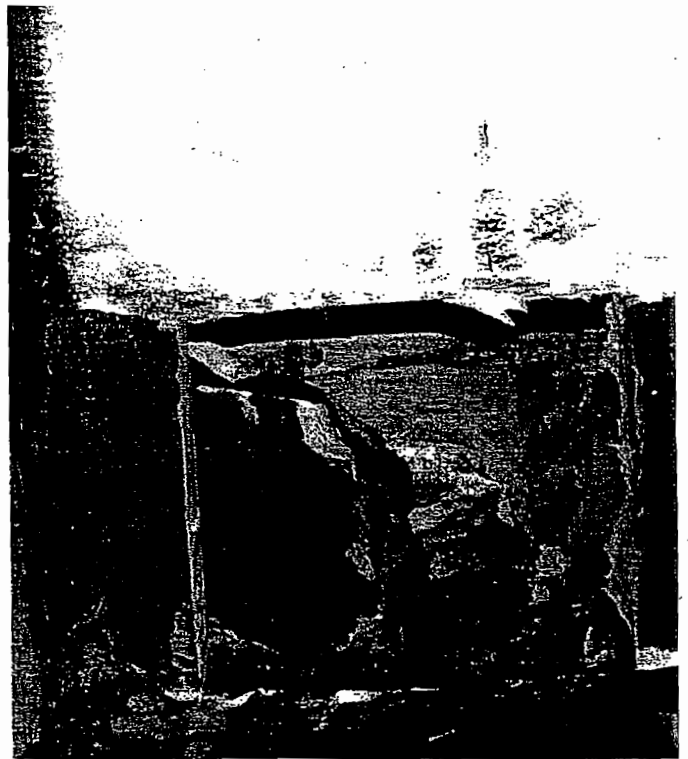


Photo 8 Tile base cove of janitorial storage area

Maranatha Correctional Facility, Adelanto California

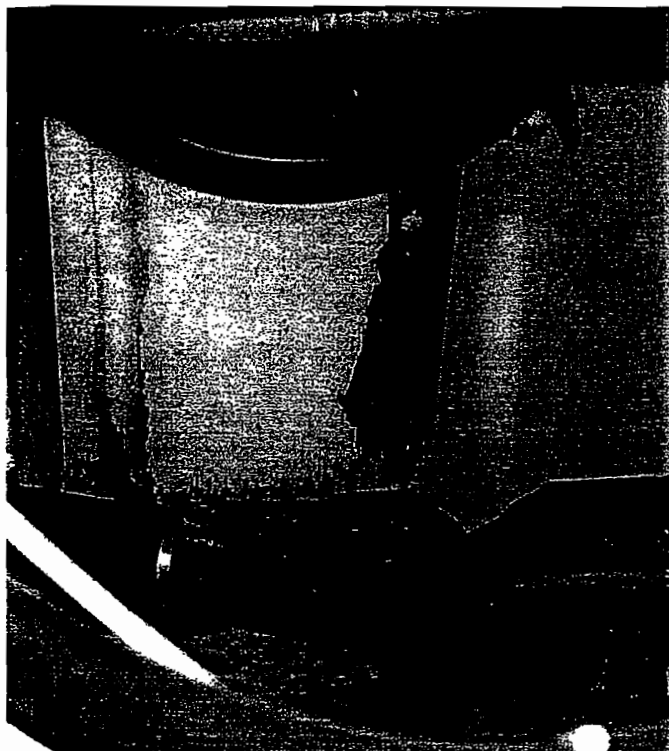


Photo 9 Laundry room, gypsum wallboard pony wall

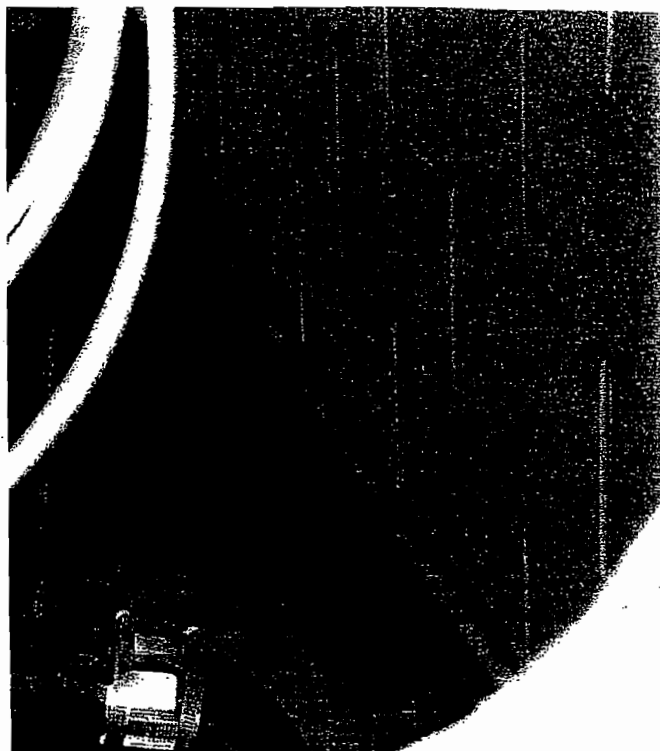


Photo 10 Laundry room, cinder block wall

TAB

F

MEMORANDUM OF UNDERSTANDING
BETWEEN MARANATHA CORRECTIONS, LLC AND
THE
DEPARTMENT OF CORRECTIONS
FOR EXTENSION OF TERMINATION PERIOD
TO BE INCORPORATED BY REFERENCE IN
CONTRACT #R96.408
AMENDMENT #9
FISCAL YEAR 2004/2005

- Maranatha Corrections, LLC (Contractor) and California Department of Corrections (CDC) met on September 29, 2004, to discuss an extension of the termination date for Maranatha Corrections, LLC's contract to operate the Victor Valley Modified Community Correctional Facility (VVMCCF). At that time the Parties agreed to extend the contract termination date from October 31, 2004, to November 30, 2004, and have executed a previous MOU to effectuate that agreement. That memorandum is attached hereto as Exhibit "A".
- The above parties met on November 17, 2004, and again on December 16, 2004 to further discuss the issues surrounding the contract and the continuation or termination thereof. At these meetings, the parties agreed to continue their discussions and to extend the contract termination date from the previously extended dates of November 30, 2004, and January 31, 2005, to June 30, 2005. This MOU is designed to effectuate that agreement.

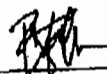
This MOU is subject to these terms and conditions:

1. The same terms and conditions as the MOU dated 10/29/04 signed by the parties with the exceptions that all the referenced November 30, 2004 dates will be changed to June 30, 2005.
2. The parties agree that this MOU shall be incorporated by reference in Amendment #9, and CDC agrees to expedite the amendment approval process.
3. Should the parties be unable to agree on mutually acceptable terms for the continuation of this agreement beyond June 30, 2005, then Contractor agrees to cooperate with CDC in winding down the operations of VVMCCF, and to provide CDC access to VVMCCF to enable CDC to satisfy its obligations to CDC staff; to take possession of its property at the facility; and to secure the public safety by arranging for the orderly transfer of inmates to other facilities by that time.

DATE January 21 2005


Terry Moreland
Chief Executive Officer

DATE: January 14, 2005


Pamela A. Prudhomme, Chief (A)
Community Correctional Facilities
Administration
Institutions Division
California Department of Corrections

TAB

G

DEPARTMENT OF PUBLIC HEALTH



COUNTY OF SAN BERNARDINO HUMAN SERVICES SYSTEM

- 385 North Arrowhead Avenue - San Bernardino, CA 92415-0160 - (909) 884-4056
- 1647 East Holt Boulevard - Ontario, CA 91761 - (909) 458-9673
- 13911 Park Avenue - Victorville, CA 92392 - (760) 243-3773
- San Bernardino County Vector Control Program
2355 East 5th Street - San Bernardino, CA 92415-0064 - (909) 388-4600

JAMES A. FELTEN, MPA
Public Health Programs Administrator

ERIC K. FRYKMAN, MD, MPH, MBA
Director of Public Health

DANIEL J. AVERA, REHS
Chief of Environmental Health

2/2/05 - TM - will incorporate corrections

February 1, 2005

Also serving the cities of

Adelanto	Montclair
Apple Valley	Needles
Barstow	Ontario
Big Bear Lake	Rancho
Cucamonga	
Chino	Redlands
Chino Hills	Rialto
Colton	San Bernardino
Fontana	Twentynine Palms
Grand Terrace	Upland
Hesperia	Victorville
Highland	Yucaipa
Loma Linda	Yucca Valley

Cpl. D.J. McCarty
Sheriff's Detective
Detention and Corrections Bureau
9500 Etiwanda Ave.
Rancho Cucamonga, CA 91739

SUBJECT: Environmental Health inspection of Maranatha Private Corrections LLC., located at 9438 Commerce Way, Adelanto, CA., conducted on Friday January 28, 2005. Inspection was conducted by Jim Nichol, REHS III, and Kathy Taylor, REHS II at the request of San Bernardino County Sheriffs Department.

FINDINGS: Overall sanitation was poor. Actual violations are listed below, separated by area.

Kitchen

Structural violations in Kitchen include the following:

- Flex drain used to drain self serve soda machine rather than hard plumbing to achieve proper air gap
- Unapproved flooring and covered base in self serve soda area
- Missing soap and paper towel dispensers at hand sink next to dishwasher
- Deteriorated wall at corner near dishwasher, FRP peeling from wall, tile base broken
- Pre-rinse nozzle hanging low creating possible cross-connection
- Leak at pre-rinse nozzle, covered with towel
- Moldy caulking at pre-rinse station and behind sinks
- Leaking waste plumbing under preparation sink
- Rusty storage rack
- Worn cutting boards

- Lack of cold water at end prep. sink
- Walk-in freezer not flashed to wall
- Preparation sink waste pipe on floor. Should be at least inches above floor
- No covered base on exterior of walk-in freezer
- Leak from condenser inside produce walk-in cooler
- Light cover missing in produce walk-in cooler
- Exhaust hood not functional
- Exhaust hood filters missing or broken
- Grease drain pan missing from exhaust hood
- Cracked lid on mixer
- Fan not functional in restroom
- Broken glass window on manager's office door
- Ice machine lid cracked
- Rear exterior doors not rodent-proof, large gap under doors
- Air curtain at rear doors not functional
- Exposed electrical at air curtain junction box and in restroom
- Self-closers on restroom doors broken or missing
- Frp wainscot in mop room is warped, caulking deteriorated and mold on walls

Operational violations in Kitchen include the following:

- Lack of sanitizer buckets for wiping towels. Many soiled towels observed on work surfaces
- Cole slaw observed at 56 F with no attempt to maintain proper holding temperature of 41 F or below
- Hot holding cabinet observed at 130 F where minimum of 135 F is required
- Accumulated food debris observed inside ovens
- Accumulated food debris observed on potato peeler and wall behind
- Accumulated food debris observed on mixer and other equipment
- Accumulated debris observed on floor behind ice machine
- Accumulated debris observed on floor under dry storage shelving
- Accumulated debris on wire shelving
- Dirty plastic food storage tubs
- Observed personal drinks on or above work surfaces
- Observed trash can lid in prep sink
- Observed 'fly strips', full with flies, in food prep. areas
- Un-labeled spray bottles
- Observed worker sitting on food container in dry storage room
- Accumulated debris on ceiling vents in restrooms
- Jackets on food racks in dry storage room
- Bowl used as scoop for ice machine. Handled scoop is required
- No food worker certificates for food workers
- No 'Food Safety Certifications' for managers
- Poor food handling practices

Bakery

Structural violations in Bakery include the following:

- No hot water to bakery. Minimum of 120 F required. Observed 106 F and below.
- Insulation falling through ceiling vent

- Floor sink grate missing
- Leaking waste plumbing under 3-compartment utensil sink
- Cracked/missing light shields
- Ceiling panel missing over proofer
- Missing leg on extruder, supported by bowl
- Vent cover missing in restroom
- Wood shelf over 3-compartment sink
- Moldy caulking behind sinks

Operational violations in Bakery include:

- No soap or paper towels in dispensers at kitchen hand sink
- Personal drinks on or above work surfaces
- Ceiling intake above dough table is full of flour debris
- Bulk food bins not labeled as to contents
- Lack of scoops for bulk food bins
- Fly strip, full of flies, over dough preparation table
- Accumulated food debris on bakery pans

Receiving/Laundry Storage

- Exterior doors not rodent proof, gap observed under doors
- Rodent droppings observed in clean laundry storage room

Receiving Cells

- Dirty light fixtures
- Floors need thorough cleaning and re-sealing

Laundry Room

- No hot water at restroom hand wash sink
- Soap dispenser not functional in restroom
- Fan guard missing on dryer#5
- Pulley guards not in place on 2 dryers
- Radio is hardwired into wall outlet, an electrical hazard

Housing

Dorm 2D was selected for inspection:

- Lack of proper ventilation as evidenced by: accumulation of mold and yeast growth on walls, particularly just outside shower areas; heavy condensation on walls throughout dorm
- Mold growth on grout in showers
- Broken tiles at ledge of showers
- Broken floor tile in upstairs restroom area
- Some push button faucets in restroom areas not functional
- Peeling/buckling walls above baseboard in bunk areas

- Torn mattresses
- Torn pillows
- Thin/worn sheets for bed

Summary:

Using the standardized inspection/grading system used by San Bernardino County Environmental Health Services (see attached grading manual) for inspection of Retail Food Facilities, the following assessment is made:

The Kitchen scored a total of 67 out of 100, a failing grade, normally resulting in closure of a food facility.

The Bakery scored a total of 77 out of 100, a grade that is not acceptable and would require follow-up inspection. However, lack of hot water to a food facility is considered a significant health risk and likely would result in immediate closure of the food facility.

<http://www.sbcounty.gov/dehs/restgrades/content/510086GradingABCforweb.pdf>

Any plans to upgrade or remodel the kitchens will require a submission of plans to EHS for review and approval

The ventilation problem in Dorm 2 is significant. The present condition is unacceptable by any housing standard.

Please let me know if I can be of further assistance.

Jim Nichol, REHS III
 Environmental Health Services
 San Bernardino County Public Health
 385 N. Arrowhead Ave.
 San Bernardino, CA 92415-0160
 (909) 387-0214

MARK H. UFFER
 County Administrative Officer

Board of Supervisors

BILL POSTMUS.....	First District	DENNIS HANSBERGER.....	Third District
PAUL BIANE.....	Second District	GARY C. OVITT.....	Fourth District
JOSIE GONZALES.....	Fifth District		

TAB

H

COMPLETE APPRAISAL - SELF-CONTAINED REPORT

OF THE

**VICTOR VALLEY COMMUNITY
CORRECTIONAL FACILITY
PLUS WAREHOUSE BLDG. AND VACANT LOT**

9330 COMMERCE WAY (Primary CCF Address)
16365 BEAVER ROAD (Separate Warehouse Bldg.)
APN 3129-261-32 (Separate Adj. Vacant Lot)

CITY OF ADELANTO

SAN BERNARDINO COUNTY, CALIFORNIA 92301

EFFECTIVE VALUATION DATE AS OF
OCTOBER 1, 2005 – PROSPECTIVE VALUE

PREPARED FOR

COUNTY OF SAN BERNARDINO, BOARD OF SUPERVISORS
ATTN: MR. A. LOUIS SCHNEPP, ASA, SRWA
REAL ESTATE SERVICES DEPARTMENT
825 E. THIRD STREET, ROOM 207
SAN BERNARDINO, CALIFORNIA 92415-0832

THE HEATH GROUP

▪ FULL-SERVICE REAL ESTATE ANALYSIS ▪
11403 WEST BERNARDO COURT
SAN DIEGO, CALIFORNIA 92127
TEL. (858) 673-1177 ▪ FAX (858) 673-8631

February 28, 2005

Mr. A. Louis Schnepf, ASA, SRWA
Real Estate Services Department
County of San Bernardino, Board of Supervisors
825 E. Third Street, Room 207
San Bernardino, California 92415-0832

Re: Appraisal of the Victor Valley Community Correctional Facility (CCF)
plus the Adjacent Warehouse Building and Adjacent Vacant Lot
9330 Commerce Way (primary CCF address)
16365 Beaver Road (adjacent ±6,360 sf warehouse bldg.)
APN 3129-261-32 (adjacent ±2.46-acre vacant lot)
Adelanto, San Bernardino County, California 92301

Dear Mr. Schnepf:

In accordance with your request and authorization, we have prepared an appraisal of the above-referenced property ("Subject"). This appraisal is a **written self-contained report** prepared under Standards Rule 2-2(a) of a **complete appraisal** of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

This appraisal is prepared in accordance with the Uniform Standards of Professional Appraisal, as set forth by the Appraisal Standards Board of the Appraisal Foundation with adherence to Standard Rules 1 and 2, as well as adherence to the Ethics Rule, Competency Rule, and Supplemental Standards Rule. This appraisal is subject to the standard Limiting Conditions and Assumptions (p. 169), Extraordinary Assumptions (p. 171) and the Hypothetical Conditions (p. 171) set forth in this report.

The appraisers have conducted a personal inspection of the subject property and have completed the necessary investigation and analysis for the subject's type of property. The concluded value represents cash or equivalent terms. The effective date of valuation is **October 1, 2005**. The effective date of valuation correlates the estimated date of completion of improvements to be made to the subject and the estimated date of the lease commencement. We estimate the **fee simple** interest in the subject property to be as follows:

VICTOR VALLEY CCF, ADELANTO
Mr. A. Louis Schnepf, ASA, SRWA

Letter of Transmittal

◆ **Prospective Market Value “As Complete” of the Entire Property** **\$28,000,000**

The “Entire Property” includes the CCF property, including the FF&E specified in this report (p. 176-179), the adjacent warehouse property and the adjacent vacant lot.

We appreciate having the opportunity to be of service to the County of San Bernardino and would be pleased to discuss any comments or questions that you may have regarding our analysis.

Respectfully submitted,

Thomas D. Heath, MAI
CA Certified General Appraiser
AG 007301

John P. DeLara, MAI
CA Certified General Appraiser
AG 008095

ASSUMPTIONS AND LIMITING CONDITIONS

A. GENERAL ASSUMPTIONS

This appraisal has been made with the following **General Assumptions**:

- i. No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be good and marketable, unless otherwise stated.
- ii. The property is appraised free and clear of any or all liens or encumbrances, unless otherwise stated.
- iii. Responsible ownership and competent property management are assumed.
- iv. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
- v. All engineering studies are assumed to be correct. The plot plans and illustrative material in this report are included only to help the reader visualize the property. The appraiser has made no survey of the property.
- vi. The appraiser assumes that there are no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable. The appraiser assumes no responsibility for such conditions, or for engineering which might be required to discover such factors.
- vii. It is assumed that the property is in full compliance with all federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
- viii. It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless a nonconformity has been identified, described, and considered in the appraisal report.
- ix. It is assumed that all licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimated contained in this report is based.
- x. It is assumed that the use of land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
- xi. On all appraisals, subject to satisfactory completion, repairs, or alterations, the appraisal report and value conclusions are contingent upon completion of the improvements in a workmanlike manner.
- xii. Disclosure of the contents of the appraisal report is governed by the bylaws and regulations of the professional appraisal organizations with which the appraiser is affiliated.

B. GENERAL LIMITING CONDITIONS

This appraisal has been made with the following General Limiting Conditions:

- i. Any allocation of the total value estimated in this report between land and the improvements applies only under the stated program of utilization. The separate values allocations to the land and building must not be used in conjunction with any other appraisal and are invalid if so used.
- ii. Possession of this report, or copy thereof, does not carry with it the right of publication.
- iii. The appraiser, by reason of this appraisal, is not required to give further consultation or testimony or to be in attendance in court with reference to the property in question, unless arrangements have been previously made.
- iv. Neither all, nor any part of the contents of this report, or copy thereof (especially conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraiser.

C. ENVIRONMENTAL DISCLAIMER

The value estimated is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.

D. AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) became effective January 26, 1992. I (we) have not made a specific compliance survey an analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the subject property is not in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect upon the value of the subject property. Since I (we) have no direct evidence relating to this issue, I (we) did not consider possible noncompliance with the requirements of the ADA in estimating the value of the subject property.

E. HYPOTHETICAL CONDITIONS

This appraisal has been made under the following Hypothetical Conditions:

- i. The prospective value of the subject assumes all improvements detailed in the County Lease to be completed by the anticipated completion date of October 1, 2005. October 1, 2005 also represents the effective date of valuation for the prospective value estimate.
- ii. The current conditional use permit for the subject allows for 550 beds. The County intends to increase the bed count to 660 beds. Our valuation analysis assumes that the City of Adelanto allows the increase from 550 to 660 beds.
- iii. Item 8 of the preliminary title report indicates the following:

The fact that the offer of dedication of those certain streets shown on Parcel Map No. 12345 as Industry Way, Beaver Road, Koala Road, Cassia Road, Commerce Way and Holly Road was not accepted on said Map by the City of Adelanto and will not be under the control of said City of Adelanto, until the streets are improved to City Standards.

Our valuation analysis hypothetically assumes that the streets are improved to City Standards. Should it be determined at a later date that there are associated costs with additional improvements required by the City to bring up to City Standards, then market value of the subject would need to be adjusted to reflect the pro-rata share attributable to the subject parcels.

F. EXTRAORDINARY ASSUMPTIONS

This appraisal has been made under the following Extraordinary Assumptions:

- i. The market value estimate of the subject includes certain furniture, fixtures & equipment (FF&E). The specified list of FF&E, which consist of several hundred line items, was provided by the subject property owner. The appraiser **DID NOT** conduct a detailed inventory of the FF&E, although many of the items were visible to the appraiser at the time of our inspection. The contributory value of the FF&E is primarily based on the cost breakdown provided by the owner, which we understand was audited by the state when the items were placed in service.

TAB

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ATTORNEY CLIENT AND ATTORNEY
WORK PRODUCT PRIVILEGED
MATERIAL REDACTED FROM RELEASE.