



CALIFORNIA STATE
PUBLIC WORKS BOARD

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ NINTH FLOOR ■ SACRAMENTO CA ■ 95814-3706 ■ (916) 445-9694

STATE PUBLIC WORKS BOARD
May 12, 2006 Meeting
MINUTES

PRESENT:

Ms. Molly Arnold, Chief Counsel, Department of Finance
Mr. Ron Joseph, Director, Department of General Services
Ms. Cindy McKim, Deputy Director, Department of Transportation

ADVISORY MEMBER:

Director, Employment Development Department

LEGISLATIVE ADVISORS:

Assembly Member
Assembly Member Wilma Chan
Assembly Member Lloyd E. Levine
Senator Gilbert Cedillo
Senator Wesley Chesbro

STAFF PRESENT:

Karen Finn, Administrative Secretary, Public Works Board
Deborah Cregger, Legal Counsel for the Public Works Board
Mark Campbell, Budget Analyst for the Department of Finance
Koreen Hansen, Budget Analyst for the Department of Finance

OTHERS PRESENT:

Darlene Masten, California Department of Corrections and Rehabilitation
Blessy Torres, Department of General Services
Dale Clevenger, California Community Colleges
Phil Osborn, State Treasurer's Office
Debra Hampton, California Department of Corrections and Rehabilitation

CALL TO ORDER AND ROLL CALL:

Ms. Molly Arnold, Chief Counsel for the Department of Finance called the meeting to order at 4:30 a.m. Karen Finn, Administrative Secretary for the State Public Works Board, called the roll. A quorum was established. Ms. Finn asked that it be noted that since no bond items would be on the agenda the State Controller's Office and State Treasurer's Office need not attend and will not be marked absent.

The minutes were adopted and approved for the May 4, 2006 special meeting, with one amendment correcting the time of the meeting from 4:30 am to 4:30 pm. It was noted that the minutes for the April 14, 2006 minutes were to be carried over to the June 12, 2006 meeting.

**BOND ITEMS:
No Bond Items**

CONSENT CALENDAR:

Ms. Finn reported that the Consent Calendar covered items numbered 1 through 4. In summary these items proposed:

- 1 request to approve performance Criteria and Concept Drawings, [1]
(Ms. Finn noted that the CEQA waiting period expired on May 17th and there is a \$11 million savings on this item and that is why the dollar amounts on the analysis do not balance)
- 1 request to recognize the settlement of claim with Norment Security Group and approve redirection of existing project authority to award claim settlement, [2]
(Ms. Finn noted this was a \$1.6 million claim that had been submitted and the state was able to settle the claim for \$325,000. Ms. Finn also reported that the item reported a release document being attached for the Board review if it liked. This attachment was not included, but if anyone on the Board wished to review it, it would be produced.)
- 1 request approve augmentation of working drawing phase and the use of Inmate Ward Labor, [3]
- request to approve preliminary plans, [4]

There were no 20-day letters for this agenda.

In summary: staff recommended approval of the **Consent Calendar** consisting of Items numbered 1 through 4.

Ms. Arnold asked if there was any public to comment on these items?
There was no response.

A motion was made by Ms. McKim and Second by Mr. Joseph to approve the Consent Calendar

The Consent Calendar was approved by a 3-0 vote.

ACTION ITEMS

Ms. Finn then reported on the one action item numbered 5 concerning the California Science Center. Ms. Finn reported that to progress on the project the Board would need to vote on the release of property and some amendments to the Leases as well as approve the concept. Ms Finn reported on these issues (this can be found listed on Action Item 5 of the agenda "a' through 'e'").

Ms. Cregger was present to answer any questions from the Board.

Ms. Finn concluded that the Science Center Foundation and Staff have continued to work together, making sure the Bonds were on track and issued within the next 30 to 60 days. Ms. Finn provided an answered about a question issued from the Chair of the last regular meeting concerning the extra cost to staff and counsel due to the complex and time consuming nature of

this item. She reported that the Foundation has capped their Bond Counsel expenses at approximately \$200,000

Ms. Arnold asked what the status was with the Treasurer's Office concerning this project.

Ms. Finn answered that the Treasurer's staff have reviewed this item and indicated that they have no problems with it.

Ms. Arnold then asked if there were any leans on the property with regard to the right of easement.

Ms. Finn verified with Ms. Cregger and reported that they believed there were no leans.

Ms. Arnold asked for any public comment. No response.

A motion was made by Mr. Joseph and Second by Ms. McKim to approve Action Item 5

Action Item 5 was approved by a 3-0 vote.

OTHER BUSINESS:

Ms. Finn reported that staff thought we'd be able to ask the Board's approval to award contracts for our regular contracts that we have with outside bond counsels. A technical problem with our ten-day was noticed and staff would like to put this over until next month.

REPORTABLES:

Ms. Finn reported that there were nine reportable items for this month that staff had approved under authority delegated by the Board.

NEXT MEETING:

Ms. Finn said the next regularly scheduled meeting is set for:

Friday, June 12, 2006, at 1:30 PM, State Capitol, Room 113.

Ms. Arnold asked one more time for any public comment on any items and then adjourned the meeting.

End at 10:14 a.m.

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AGENDA AND STAFF ANALYSIS

**NOTICE OF MEETING
STATE PUBLIC WORKS BOARD
Friday
May 12, 2006**

The **STATE PUBLIC WORKS BOARD** will meet on, **Friday, May 12, 2006, at 10:00 a.m. in Room 113 in the State Capitol, Sacramento, California.** In accordance with provisions of Section 11125 of the Government Code, a copy of the Agenda is attached.

Karen Finn
Administrative Secretary

Attachment

STATE PUBLIC WORKS BOARD

**Friday
May 12, 2006
10:00 a.m.
Room 113
State Capitol
Sacramento, California**

I. Roll Call

Michael C. Genest, Director, Department of Finance
Ron Joseph, Director, Department of General Services
Cindy McKim, Deputy Director, Department of Transportation
State Controller's Office
State Treasurer's Office
Director, Employment Development Department
(Advisory Member)

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Assembly Member, Legislative Advisor
Assembly Member, Wilma Chan, Legislative Advisor
Assembly Member, Lloyd E. Levine, Legislative Advisor
Senator, Wesley Chesbro, Legislative Advisor
Senator, Gilbert Cedillo, Legislative Advisor
Senator, Legislative Advisor

**II. Approval of minutes from the April 14, 2006 regular and May 4 special meeting.
Report on conditional approvals of last meeting.**

III. Bond Items	Page 4
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BOND ITEM

BOND ITEM –

NO BOND ITEMS

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CONSENT ITEM

CONSENT ITEM – 1

DEPARTMENT OF GENERAL SERVICES (1760)
CENTRAL PLANT RENOVATION
SACRAMENTO, SACRAMENTO COUNTY
Central Plant and Various Locations

*Authority: Chapter 157/03, Item 1760-301-0660 (1)
as reappropriated by Chapters 38 & 39/05, Item 1760-490(2)*

Approve Performance Criteria and Concept Drawings

APPROVED 3/0

See amended portion following this item's analysis (Exhibit A)

CONSENT ITEM

STAFF ANALYSIS ITEM – 1

Department of General Services
Central Plant Renovation
Sacramento, Sacramento County
Central Plant and Various Locations

Action requested

The requested action will approve Performance Criteria and Concept Drawings for this project.

Scope Description

This project is within scope. This project renovates, modernizes, and expands the existing Central Plant to meet the current and planned heating and cooling load growth for Capital Area. It expands the Plant (35,000 sf) to accommodate additional equipment such as chillers (15,400 tons), boilers (154,000 lbs/Hour.), pumps, piping, and other required ancillary equipment and includes the demolition of the existing gasifier building. New elements to be constructed include: thermal energy storage tank (52,000 Ton-Hours); cooling towers (20,900 tons); and cogeneration plant (3 mega watt). Work at the Plant includes modification of existing equipment / piping / pumps as required for the new equipment and construction of new distribution branch to supply Office Buildings 8 & 9, a stub to potential future development at Blocks 203/204, and upgrading the energy management and control center. Additional work includes the decommissioning of the Ranney and Front Street wells. The Project also acquires certain property rights from the City of Sacramento. Backup major equipment pieces such as chillers, boilers, cooling towers, and pumps for maintenance, fuel flexibility, and reliability will be included in the Project.

The Project provides for the environmental impacts at issue with the Central Valley Regional Water Quality Control Board (RWQCB) Cease and Desist Order (issued March 2002) related to the discharge of heated water into the Sacramento River.

The provisional language in the Budget Act of 2003 authorized the design-build delivery method in subparagraph (i) paragraph (A) subdivision (3) of GC Section 14661. This sets forth the selection process for the design-build competition based upon performance, price and other criteria set forth by DGS in the design-build solicitation package. The contract award will be made to the design-build entity whose proposal is judged as providing the best value in meeting the interest of DGS and meeting the objectives of the Project.

Funding and Cost Verification

This project is within cost. Chapter 157/03, Item 1760-301-0660 (1) appropriated \$159,722,000 for property acquisition, design and construction of the Central Plant Renovation Project. This amount was reappropriated by Chapter 38/05, Item 1760-490 (2).

\$159,722,000 total authorized project costs.

\$ 18,272,000 project costs previously allocated: Acquisition \$5,000,000; Preliminary Plans \$13,272,000

\$130,400,000 project costs to be allocated for the Design-Build phase to include \$130,813,000 design-build Contract, \$3,924,390 contingency and \$7,543,610 A&E Costs.

AMENDED THE FOLLOWING PAGE. PLEASE SEE EXHIBIT A

CEQA

A Notice of Determination was filed with the State Clearinghouse on April 18, 2006, and the waiting period expires on May 17, 2006.

Environmental Site Assessment (ESA) Phase I and II studies were performed on the Project Site. Soil and groundwater contamination were identified during the geotechnical drilling. An underground diesel storage tank is the most likely source of the contamination. The Sacramento County Environmental Management Department is aware of the contamination issues and is working closely with the DGS to formulate a remediation plan to address the contamination.

Due Diligence

DGS will complete required real estate due diligence services with the impending signing of Encroachment Permits by the City of Sacramento.

Project Schedule

The project schedule is as follows:

Issue design-build solicitation package:	June, 2006
Award design-build contract:	October, 2006
Complete building construction:	May, 2009

Staff Recommendation: Approve Performance Criteria and Concept Drawings

Amended in the minutes to this item. Given the math in the table above does not total correctly the amended page is being added to correct error. The Approval of the Performance Criteria and Concept Drawings is unaffected by this error. See Exhibit A next page.

Exhibit A

Funding and Cost Verification

This project is within cost. Chapter 157/03, Item 1760-301-0660 (1) appropriated \$159,722,000 for property acquisition, design and construction of the Central Plant Renovation Project. This amount was reappropriated by Chapter 38/05, Item 1760-490 (2).

An estimated savings of \$11,881,000 is projected from acquisition and preliminary plans. These funds were already allocated. Of that amount, \$831,000 will be used to augment the design-build phase, resulting in a total project savings of \$11,050,000.

\$159,722,000	total authorized project costs
\$148,672,000	total estimated project costs
\$18,272,000	project costs previously allocated: acquisition \$5,000,000 \$12,400,000; preliminary plans \$13,272,000 \$5,872,000
\$130,400,000 \$142,281,000	project costs to be allocated: design-build \$142,281,000 phase to include (\$130,813,000 design-build contract, \$3,924,000 contingency, and \$7,544,000 A&E Costs) (includes an additional cost of \$831,000 to design-build)
\$11,881,000	estimated project savings: acquisition \$9,700,000; preliminary plans \$2,181,000
\$831,000	augmentation to design-build (already included in \$142,281,000 design-build costs to be allocated)

The table illustrates more clearly the project savings and corrects the math error.

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CONSENT ITEM

CONSENT ITEM – 2

**DEPARTMENT OF CORRECTIONS AND REHABILITATION (5225)
ADMINISTRATIVE SEGREGATION HOUSING UNIT PROJECT**

Multiple Sites

*Authority: Chapters 500 and 502, Statutes of 1998; 5240-303-0001 (1)
Chapter 50, Statutes of 1999, 5240-301-0660 (1), 61.01.950*

- a. **Recognize the settlement of claim with Norment Security Group**
- b. **Approve redirection of existing project authority to award claim settlement**

APPROVED 3/0

CONSENT ITEM

STAFF ANALYSIS ITEM – 2

Department of Corrections and Rehabilitation
Administrative Segregation Unit Project – Multiple Sites (10)

Action Requested

The requested action will approve the settlement of the claim and approve a redirection of existing project authority to award claim settlement.

Scope Description

This project is within scope. The Administrative Segregation Unit (Ad-Seg) project consists of constructing 10 semiautonomous buildings to be located at 10 existing correctional facilities. The project, when completed, will add a total of 1,000 cells to the California prison system. The authorized appropriations will be shared among 10 existing prison sites for site studies, design and construction.

Funding and Project Cost Verification

This project is within cost. The Department of Corrections and Rehabilitation (CDCR) requests a redirection of existing project authority for the settlement of the claim with Norment Security Group (NORMENT) in the amount of \$325,000. All cost categories have been aligned to actual costs.

CDCR executed three Purchase Orders with NORMENT for low voltage work (including fire alarm, personal alarm, detention door controls, local intercom, and public address system) at nine CDCR Ad-Seg housing units throughout the State. In January of 2006, NORMENT filed a request for arbitration with the State of California, requesting payment of approximately \$1,663,000 for recovery of costs associated with delays of the Ad-Seg projects that extended their involvement in the projects. NORMENT'S claim is that these delays caused added work outside of their scope of services, necessitated additional materials not called for in the original Purchase Orders, and caused payments to NORMENT to be delayed.

On March 29, 2006, CDCR and NORMENT met by mutual agreement to once again attempt to resolve the issues outlined in NORMENT'S claim. While most of the claimed additional costs are disputed by CDCR, the department finds that some of the claimed additional costs have some foundation in fact. As some delays to the project were both unavoidable and could not be controlled by NORMENT, those delays may have resulted in some legitimately recoverable cost to the vendor. Of the \$1.663 million claimed by NORMENT, CDCR found some merit in the following areas:

- Interest and penalties for late and delayed payments
- Increased material and supply costs for damaged, lost and additional (not in contract) construction supplies
- Added labor costs for out-of-scope work and schedule inefficiencies not within the control of NORMENT

After significant discussion of the claimed areas of additional cost, CDCR offered a settlement amount of \$325,000, which was accepted by NORMENT representatives. All parties subsequently signed a SETTLEMENT AGREEMENT AND MUTUAL RELEASE, which has been attached for reference purposes to this document.

\$97,826,000 total estimated project cost

\$97,826,000 project cost previously allocated: preliminary plans \$1,635,000; working drawings \$2,397,000; project administration \$1,314,000; equipment \$717,000; agency-retained \$8,501,000; construction \$82,573,000 (contract \$73,875,000; contingency \$7,697,000 and A&E \$1,001,000); and unallocated appropriation balance \$689,000

CEQA

The Department certifies CEQA requirements have been met. Mitigated Negative Declarations were prepared for each of the proposed sites. The Notice of Determinations was filed with the State Clearinghouse on May 24, 1999 and August 31, 1999, respectively. The waiting periods for the ten sites expired on June 23, 1999 and October 1, 1999, without comment.

Project Schedule

The project schedule is as follows:

Prototype SATF (Corcoran II)

Approve working drawings	February 2000
Complete construction	March 2002

Site Adapt (9 sites)

Approve working drawings	June 2000
Complete construction	April 2003

Staff Recommendation: Recognize the settlement of the claim and approve a redirection of existing project authority to award claim settlement

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CONSENT ITEM

CONSENT ITEM – 3

DEPARTMENT OF CORRECTIONS AND REHABILITATION (5225)
CHUCKAWALLA VALLEY STATE PRISON, BLYTHE, RIVERSIDE COUNTY
Heating, Ventilation, and Air Conditioning System

Authority: Chapter 379, Statutes of 2002, Item 5240-301-0751(1), 61.22.004
Chapter 208, Statutes of 2004, Item 5240-301-0001(8), 61.22.004
Chapter 38/39, Statutes of 2005, Item 5225-301-0660(1), 61.22.004

- a. **Approve augmentation of working drawings** **\$460,000**
(1.47 percent of total project)

- b. **Approve the use of Inmate Ward Labor**

APPROVED 3/0

CONSENT ITEM

STAFF ANALYSIS ITEM – 3

Department of Corrections and Rehabilitation
Chuckawalla Valley State Prison, Blythe, Riverside County
Heating, Ventilation, and Air Conditioning System

Action Requested

The requested action will approve an augmentation to the working drawing phase and the use of Inmate Ward Labor resources pursuant to Public Contract Code Section 10103.5 to be used in the construction phase.

Scope Description

This project is within scope. This project includes replacing failing evaporative cooling units, repair collateral damage to roofs and building structures, and rehabilitate the housing unit showers. It will also provide a Central Chiller Plant (CCP) and associated piping loop with new heating, ventilation, and air conditioning (HVAC) units at the buildings to replace the deteriorated evaporative cooling units. The CCP will be located on the site and designed to facilitate future expansion to service the adjacent Ironwood State Prison. The housing units will receive new roofing, additional roof insulation, wall insulation, shower rehabilitation, and minor structural repairs to roof and wall areas. Other buildings will receive new roofs without additional insulation; metal roofs and will only have damaged areas replaced; and some buildings will have minor structural repairs.

Funding and Project Cost Verification

This project is not within cost. This project was comprised of several “projects” put into one package for efficiency in design and construction, and to minimize the impact on the institution. However, only one bid was received in November 2005, and it was double the State’s estimate. We have since talked extensively with the prime bidder, some of his subcontractors, and with other contractors who considered bidding on the project. As a result of those conversations and subsequent in-house meetings, including a value engineering session, the Department believes the best way to proceed is to separate different scopes of work and bid them out separately.

Separating the work by scope (HVAC replacement, shower renovation, roof replacement, and minor structural repairs) will address most of the issues contractors had with bidding the project as a whole. Those issues are: too large for small bidders in an area where there are few large contractors; the “mix” of work did not lend itself to attract typical general contractors; the length of contract required a longer bond period than is typical; and working inside an occupied prison.

Separating the work essentially by trades and implementing the value engineering items should receive more bidders and more competitive bids. To do this we need to define the separate scopes of work, incorporate value engineering items into the documents, and incorporate previous addendum items. This new strategy will require a new schedule, new cost estimate, and new milestones depending in part on who does the work, i.e. an outside contractor or Inmate/Ward Labor. Further benefit could be achieved by marketing the bid package to the trade contractors.

An augmentation is needed for the architectural and engineering firm to change the documents, the construction manager to define scopes of work, provide a new schedule and appropriate milestones, market the project to the bidding public, and the program manager to coordinate and assist both entities in preparing for a revised bidding strategy.

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CONSENT ITEM

CONSENT ITEM – 4

**CALIFORNIA COMMUNITY COLLEGES (6870)
MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT
MONTEREY PENINSULA COLLEGE, MONTEREY COUNTY**
Library Building Renovation/Conversion

Authority: Chapter 38/05, Item 6870-301-6041 (24)

Approve preliminary plans

APPROVED 3/0

CONSENT ITEM

STAFF ANALYSIS ITEM – 4

Monterey Peninsula Community College District
Monterey Peninsula College, Monterey County
Library Building Renovation/Conversion

Action Requested

The requested action will approve preliminary plans for this project.

Scope Description

The project is within scope. This project renovates 13,869 assignable square feet (asf) of former library space to be converted to a new administration building. The renovation will include 8,207 asf office space and 5,662 asf of other space.

Funding and Project Cost Verification

The project is within cost.

\$5,430,000 total authorized project costs

\$40,000 state project costs previously allocated: preliminary plans \$40,000

\$2,675,000 state project funds to be allocated: working drawings \$38,000, construction \$2,287,000 (\$2,007,000 contracts; \$136,000 contingency; \$144,000 construction management, administration, testing and inspection) at CCI 4328; and equipment \$350,000 at EPI 2649.

\$137,000 local project costs previously allocated: preliminary plans \$137,000

\$2,578,000 local project funds to be allocated: working drawings \$176,000, construction \$2,286,000 (\$2,006,000 contracts; \$136,000 contingency; \$144,000 construction management, administration, testing and inspection at CCI 4328); and equipment \$116,000 at EPI 2649

CEQA

This project has been identified in the college's notice of categorical exemption, State Clearinghouse #2006038015.

Due Diligence

Community college districts are local entities and the state does not have title to their real property, hence districts acknowledge that they have full responsibility for clearing due diligence issues for general obligation bond projects.

Project Schedule

The project schedule is as follows:

Approve working drawings: January 2007
Complete Construction: April 2008

Staff Recommendation: Approve preliminary plans

ACTION ITEM

ACTION ITEM – 5

**CALIFORNIA SCIENCE CENTER (1100)
CALIFORNIA SCIENCE CENTER, PHASE I
LOS ANGELES COUNTY**

Authority Government Code Section 15809, Section 16 of the Site Lease, Section 22 of the Facility Lease, and Sections 5.03 and 5.11 of the Master Indenture

- a. **Authorize execution of the First Amendment to Site Lease and Easement Agreement and First Amendment to Facility Lease by and between the State Public Works Board and the California Science Center, for the State Public Works Board Lease Revenue Bonds, 1997 Series A, California Science Center (the “Bonds”), in substantially the form as presented with such changes as the Board's counsel may deem appropriate. These lease amendments remove a portion of the improved site from the 1997 Series A financing and will only become effective when the document referenced in (c) below is executed and recorded.**
- b. **Approve the form of and authorize execution of the Board's Certificate in support of the above referenced First Amendment to Site Lease and Easement Agreement and First Amendment to Facility Lease with such changes as the Board's counsel may deem appropriate.**
- c. **Approve the form of and authorize the execution of an Irrevocable Right of Entry, Easement, Access and Use Agreement by and among the California Science Center Foundation, the California Science Center and the State Public Works Board in substantially the form as presented with such changes as the Board's counsel deems appropriate.**
- d. **Consent to the form of Right of Entry and Consent Permit by and between the California Science Center and the California Science Center Foundation in substantially the form as presented with such changes as the Board's counsel may deem appropriate.**
- e. **Approve the form of and authorize the execution of the first Amendment to the Tax Certificate executed by the State Public Works Board for the Bonds to reflect inclusion of concepts related to the Private Payments analysis for compliance with the private activity limitations.**

APPROVED 3/0

ACTION ITEM

STAFF ANALYSIS ITEM – 5

California Science Center
1997 Series A
California Science Center Phase I

Action requested

The requested action will (1) authorize execution of the First Amendment to Site Lease and Easement Agreement and First Amendment to Facility Lease by and between the State Public Works Board and the California Science Center, for the 1997 Series A Lease Revenue Bonds, California Science Center, (2) approve the form of and authorize execution of the Board's Certificate in support of the above referenced First Amendment to Site Lease and Easement Agreement and First Amendment to Facility Lease with such changes as the Board's counsel may deem appropriate, (3) approve the form of and authorize the execution of an Irrevocable Right of Entry, Easement, Access and Use Agreement by and between the Science Center Foundation, the California Science Center and the State Public Works Board with such changes as the Board's counsel deems appropriate, (4) consent to a Right of Entry Permit by and between the Science Center Foundation and the Science Center and (5) approve the form of and authorize the execution of a First Amendment to Tax Certificate with such changes as the Board's counsel deems necessary.

Background Information

In 1997 the State Public Works Board ("Board") issued its \$37,770,000 State Public Works Board of the State of California Lease Revenue Bonds, 1997 Series A, California Science Center ("Bonds"). The Bonds financed the construction of the main museum building and pavilion ("Phase I Facility"), which was leased by the Board to the California Science Center ("Center") pursuant to a Facility Lease.

As noted in the prior Action Item, the California Science Center Foundation ("Foundation") is proposing to issue one or more series of bonds through the State Infrastructure Bank ("Phase II Bonds") to be used to finance the construction of a new three story addition to the Phase I Facility and other related project components ("Phase II Facility"). Authorization for the Center to enter into the leases with the Foundation for the Phase II Facility is contained in Section 4101.3 of the Food and Agriculture Code ("Section 4101.3"). The Center has requested the Board remove approximately 11,000 square feet of the existing Phase I Facility from the property subject to the Center's Site and Facility Leases so that such released property can be used as part of the footprint of the Phase II Facility.

Section 4101.3 states that the lease-purchase agreement entered into between Center and the Foundation should be "... on terms that are compatible with the Phase I Project financing." Hence, in order to address the "compatibility" issue (as it relates to real estate) and to assist the Board in acting on the Center's request to release a portion of property from the Phase I Facility, the Department of General Services has been requested to assess whether the Phase I Facility can be re-let in the event of default by the Center since the Phase I Facility and the Phase II Facility will comprise a single building. This factual determination will give assurance that the construction of the Phase II Facility and the related property release does not appear to substantively alter the range of remedies available to the Board and, thus is not incompatible with the Phase I Facility financing. Written backup from DGS on these matters has yet to be finalized.

Sections 5.03 and 5.11 of the Master Indenture for the Bonds contain provisions limiting sale or disposition of the facilities financed with bond proceeds, but permit such release of the property if the State Treasurer, as Trustee, concludes that it will not result in a material impairment of the security given to the holders of the Bonds.

The Center and Foundation propose to provide the Board an irrevocable right of entry and easement ("Right of Entry") to all aspects of the released property and the Phase II Facility integral to the operation of the Phase I Facility. The Right of Entry is necessary since certain equipment and infrastructure needed to operate the Phase I Facility are located within the portion of the Phase I Facility requested to be released; this equipment and infrastructure will be located within the Phase II Facility upon completion of that project. In addition, the Right of Entry will be recorded and will provide the Board rights of entry even if the Foundation or Center has defaulted on their obligations.

Given the significance of the Right of Entry in supporting the requested release, the proposed amendments to the Board's Site and Facility Leases before you today provide that execution and recordation of the Right of Entry is a condition precedent to the effectiveness of the proposed lease amendments. Staff has been advised that once the Right of Entry is recorded in the public records, it should prevail against future lien holders of the Phase II Facility. A legal opinion from Center's counsel states that the Right of Entry provides the Board with the right of access on the released parcel and the Phase II Site at least equivalent to the access currently possessed by the Board.

It should be noted that previous "releases" done by Board and the Treasurer have generally involved unused real property adjacent to a bond financed facility. To date, the Board has not released improved property for use and development by a third-party, non-State entity such as the Foundation. While staff believes the Right of Entry provides adequate safeguards and addresses certain limitations set forth in the Bond indenture relative to release of a portion of the Facility, it must be pointed out that the nature of this requested release coupled with the extent of the modifications to the Phase I Facility in order to accomplish the design for the Phase II Facility go far beyond the mere release of unoccupied land which was the subject of prior releases.

The Center advises it will provide certifications to the Treasurer and the Board supporting their request. Special Counsel to the Board will provide a legal opinion that based on the facts set forth in such certificates there is a reasonable basis for the Board and Treasurer to conclude that the release will not result in a material impairment of the security given for payment of the Bonds. Counsel to the Center and Foundation will provide legal opinions as to the effectiveness and enforceability of the Right of Entry.

The First amendment to Tax Certificate is not directly related to the release of property; rather it is related to the Board's action last month wherein the Board agreed to utilize the private payments analysis for compliance with the private activity limitations associated with the Bonds. The amendment incorporates necessary changes into the Tax Certificate to reflect this decision. Special Counsel to the Board will provide a separate legal opinion that to the Treasurer and the Board to the effect that the First Amendment to the Tax Certificate will not have a negative impact on the tax exempt status of the Bonds.

Staff Recommendation: **Approve the form of and authorize the execution of the following documents, as presented at this meeting, with such changes as the Board's counsel may deem appropriate: 1. a First Amendment to Site Lease and Easement Agreement by and between the Board and the Center for the Bonds and a**

First Amendment to Facility Lease by and between the Board and the Center for the Bonds on the condition that these amendments will only become effective when the Irrevocable Right of Entry, Easement, Access and Use Agreement (referred to below) is executed and recorded; 2. a Certificate of the Board in support of releasing the property and executing the First Amendment to Site Lease and Easement Agreement and First Amendment to Facility Lease; 3. an Irrevocable Right of Entry, Easement, Access and Use Agreement by and among the Board, the Center and the Foundation; and 4. a First Amendment to the Tax Certificate executed by the Board.

Approve the form of and authorize consent to the terms and conditions of a Right of Entry and Consent Permit by and between the Center and the Foundation, with such changes as the Board's counsel may deem appropriate.

OTHER BUSINESS

OTHER ITEM –

Adopt a Resolution authorizing the execution of three contracts with Nationally Recognized Bond Counsel firms. Further information forth coming.

**HELD OVER UNTIL THE JUNE 12, 2006 MEETING.
NOT APPROVED**

OTHER BUSINESS

STAFF ANALYSIS ITEM –

Adopt a Resolution authorizing the execution of three contracts with Nationally Recognized Bond Counsel firms

Authorize entering into up to three contracts with Nationally Recognized bond counsel law firms to assist and advise the Board staff on complex financing, real estate, federal tax issues and related matters. The contracts will be up to three years in length and in such amounts as staff deems appropriate. Due to the specialized nature of the services to be rendered, staff recommends exempting the contracts from Disabled Veteran Business Enterprise requirements. Consent to contract out from Attorney General's Office has been obtained. Modify the Board's March 10, 2006 action relating to bond counsel contract authorization consistent with this action. Based on proposals received in response to a Request for Qualifications, staff recommends awarding contracts to the following firms:

1. Orrick Herrington & Sutcliffe LLP
2. Stradling Yocca Carlson & Rauth
3. Squire Sanders & Dempsey LLP

REPORTABLES

To be presented at meeting.

Respectfully Submitted
By:

KAREN FINN
Administrative Secretary