OPERATIONS AND MANAGEMENT SERVICES AGREEMENT

THIS OPERATIONS AND MANAGEMENT SERVICES AGREEMENT (the “Agreement”), dated as of July 1, 2003 is made and entered into by and between Hudspeth County, Texas, a political subdivision of the State of Texas (the “County”) with its mailing address as Hudspeth County Courthouse, 1111 Millican Street, Sierra Blanca, Texas 79851, and Emerald Correctional Management, L.L.C. (“Emerald”), with its principal office and mailing address located at 400 Travis Street, Suite 402, Shreveport, Louisiana 71101.

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

WHEREAS, the County intends to acquire and establish an adult correctional facility (the “Facility”) in the furtherance of its public purposes by entering into a Lease Agreement (with Option to Purchase), dated as of July 1, 2003 (the “Lease”), by and between West Texas Detention Facility Corporation, a Texas non-profit corporation (the “Lessor” or the “Corporation”) and the County; and

WHEREAS, the Corporation will issue its Senior Lien Project Revenue Bonds, Series 2003 (the “Bonds”); and

WHEREAS, the Corporation intends to enter into a Trust Indenture (“Trust Indenture”) with U.S. Bank National Association (“Trustee”) wherein certain accounts are to be established for the benefit of the Corporation, the County, and the holders of the Bonds; and

WHEREAS, the County desires to contract with Emerald to manage the Facility for the benefit of the County in accordance with the Code, and Emerald desires to accept such contract, all in accordance with the terms and conditions of this Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration for the mutual covenants herein contained the Parties hereby agree as follows:

ARTICLE I
Definitions

Capitalized terms defined in the Lease, when used in this Agreement, shall have the same meanings given to such terms in the Lease. In addition to those terms defined in the preamble, the following terms contained within this Agreement shall have the meanings hereinafter defined by this Article I:

ACA. The term “ACA” shall mean the American Correctional Association. 
Appropriated. The term “Appropriated” shall mean, with respect to any payment that the County is obligated to make under this Agreement during any fiscal year of the County, the adoption by the Commissioners Court of the County of a budget for such fiscal year that includes such payment.

Authorized Representative. The term “Authorized Representative” shall mean any person at the time designated in writing to act for and on behalf of a party to this Agreement, which designation has been furnished to the other party hereto. In the case of Emerald, its President or any Senior Vice President shall sign such designation. The County may designate any person(s) as its Authorized Representative(s) by delivering to Emerald a written designation contained in a duly passed resolution. Such designations shall remain effective until new written instructions are filed with or actual notice is given to the other party that such designation has been revoked.

Closing Date. The terms “Closing Date” and “Closing” shall mean the date on which the Corporation issues the Bonds.

County Inmate. The term “County Inmate” shall mean an inmate in the care, custody, or control of the Sheriff that is housed in a place other than the Facility.

Court Orders. The term “Court Orders” shall mean any orders or judgments issued by a court of competent jurisdiction and any stipulations, agreements, or plans entered into in connection with litigation that are applicable to the operation, management, or maintenance of the Facility and relate to the treatment or custodial care of Inmates.

Facility. The term “Facility” shall mean the 500-bed adult correctional complex to be constructed and/or expanded from time to time on grounds located in Hudspeth County, Texas.

Inmate. The term “Inmate” shall mean those prisoners charged or convicted of violations of law and duly contracted from federal, state, municipal, or other governmental authorities to be received into the care of the County and housed at the Facility, but such term shall not include “County Inmates.”

Inmate Day. The term “Inmate Day” shall mean each calendar day or part thereof, during which an Inmate is assigned to the Facility, which, for each calendar day, will be determined by the Midnight Count Report.

Lease. The term “Lease” shall mean that certain Lease Agreement with Option to Purchase, entered into on or about July 1, 2003, by and between County and the Corporation, relating to the Facility.


Marshal Contract. The term “Marshal Contract” shall mean an agreement entered into by and between County and Marshal pursuant to which Marshal will assign Inmates to the Facility for housing, care, and custody.
Midnight Count Report. The term "Midnight Count Report" shall mean the official numerical count of the number of Inmates present at the Facility at the end of each day, which for purposes of this Agreement shall be determinative of the number of Inmates present at the Facility for the day just ended. In the event an Inmate is processed into and out of the Facility in less than twenty-four hours and is not in the Facility at midnight, such Inmate's presence shall be made a part of the official numerical count for the day such Inmate arrived at the Facility.

Operating Plan. The term "Operating Plan" shall mean a plan developed by Emerald for the operation and management of the Facility, subject to approval by the County.

Parties. The term "Parties" shall mean the County and Emerald, collectively.

Pre-Opening Costs. The term "Pre-Opening Costs" shall include, without limitation: (a) up to $500,000.00 of expenses incurred by Emerald for vehicles, furniture, fixtures, equipment, and similar items of personal property ("FF&E Expenses") to be used in the operation, management, and maintenance of the Facility, all of which will be owned by the Lessor; and (b) the sum of $600,000.00 for start-up working capital for Emerald ("Start-Up Expenses") including, but not limited to, the costs and expenses incurred by Emerald in the opening and start-up of the Facility, and also including all the costs of staffing, hiring, and training personnel prior to the Service Commencement Date. County shall require that Trustee to pay all Pre-Opening Costs from the Construction Fund. The Parties hereby agree and stipulate that FF&E Expenses are "Project Costs" as that term is defined in the Trust Indenture.

Project Revenues. The term "Project Revenues" shall mean all gross payments or transfers to Trustee, as depository agent for the County, from any sources whatsoever including, without limitation, the County or another depository agent of the County, arising from the operation of the Facility including, without limitation: (a) payments for the incarceration, detention, or housing of Inmates (including Inmates under the direct jurisdiction of the County) in the Facility, (b) gross revenues generated within the Facility by the provision of goods and services to Inmates or other persons, and (c) amounts received pursuant to security provided by an operator of the Project, provided that all revenues relating to the following shall not be "Project Revenues": (i) the operation of an Inmate commissary or the sale of Inmate made hobby or craft goods, and (ii) the operation of the Inmate telephone system.

Service Commencement Date. The term "Service Commencement Date" shall mean the date of completion and acceptance of the Facility by the County.

Sheriff. The term "Sheriff" shall mean the duly elected and serving sheriff of Hudspeth County, Texas.

TCJS. The term "TCJS" shall mean the Texas Commission on Jail Standards.

Trustee. The term "Trustee" shall mean the entity appointed to serve as the Trustee pursuant to the terms of the Trust Indenture, initially being U.S. Bank National Association.
Trust Indenture. The term "Trust Indenture" shall mean the agreement entitled Trust Indenture, entered into as of July 1, 2003, by and between the Corporation and the Trustee, relating to the Facility.

User Agency. The term "User Agency" shall mean any governmental entity that enters into an Agreement with County (on terms in compliance with the requirements of this Agreement) for the housing of Inmates at the Facility. The term "User Agency" shall include, but is not limited to, the Marshal.

ARTICLE II

Agreement

Section 2.1 Term. The County hereby retains Emerald exclusively and Emerald hereby accepts this engagement for the operation, management, and maintenance of the Facility pursuant to the terms hereof. This Agreement shall be for a period of fifteen (15) years ("Term") unless an Event of Nonappropriation occurs as under Section 9.9 herein.

Section 2.2 Effective Date. This Agreement shall become effective on the Service Commencement Date and shall continue in full force and effect until 12:00 midnight fifteen (15) calendar years from said date, unless terminated as provided in this Agreement.

Section 2.3 Independent Contractor Status. Emerald in the performance of its duties under this Agreement shall occupy the position of an independent contractor with respect to the County. Nothing contained herein shall be construed as making the Parties hereto partners or joint venturers, nor, except as expressly provided herein, construed as making Emerald an agent or employee of the County. Emerald shall be solely responsible for (and the County shall not have any obligation with respect to) the interviewing, hiring, training, assignment, control, management, compensation, promotion, or termination of Emerald's employees that constitute the Facility's administration and staff. However, such activities of Emerald shall be subject to regular, on-site monitoring by the Sheriff and Emerald shall furnish reports on such matters to the Sheriff when so requested, in accordance with the Code.

Section 2.4 Operating Plan. Emerald shall develop the Operating Plan, shall submit the Operating Plan to the County, the Sheriff, and TCJS for their approval, shall attempt to obtain such approval prior to the Service Commencement Date, and shall deliver a copy of the approved Operating Plan to the Trustee. It shall be the responsibility of Emerald to obtain TCJS approval of the Operating Plan.

ARTICLE III

Representations and Warranties

Section 3.1 Representations of Emerald. Emerald represents and warrants to and for the benefit of the County, with the intent that the County will rely thereon for purposes of entering into this Agreement, as follows:
(a) **Organization and Qualification.** Emerald has been duly incorporated and is validly existing as a limited liability corporation in good standing under the laws of the State of Louisiana and is authorized to do business in, and is in good standing under, the laws of the State of Texas, with power and authority to own its properties and conduct its business as presently conducted.

(b) **Authorization.** This Agreement has been duly authorized, executed, and delivered by Emerald and, assuming due execution and delivery by the County, constitutes a legal, valid, and binding agreement enforceable against Emerald in accordance with its terms.

(c) **No Violation of Agreements, Articles of Organization, or Regulations.** The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit, or other agreement or instrument to which Emerald is a party or by which its properties are bound, or any order, rule, or regulation of any court or any regulatory body, administrative agency, or other governmental body applicable to Emerald or any of its properties, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Organization (or other corresponding charter document) or Regulations of Emerald.

(d) **No Defaults Under Agreements.** Emerald has no actual knowledge of any condition of default, nor does Emerald have any actual knowledge that there is any event in existence which, with notice or the passage of time or both, would constitute a default by Emerald, under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit, or other agreement or instrument to which it is a party, or by which any of its properties are bound, and which default would materially and adversely affect Emerald's ability to perform its obligations under this Agreement.

(e) **Compliance with Laws.** Neither Emerald nor its officers and directors purporting to act on behalf of Emerald have been advised that Emerald or such officers and directors have not been conducting business in compliance with all applicable laws, rules, and regulations of the jurisdictions in which Emerald is conducting business, and Emerald and such officers and directors have no actual knowledge of any fact that would lead them to believe that Emerald is not in compliance with all laws with respect to discrimination in hiring, promotion, or pay of employees.

(f) **No Litigation.** Except as previously disclosed in writing to the County, there is not now pending, or to the knowledge of Emerald, threatened, any action, suit, or proceeding to which Emerald is party, before or by any court or governmental agency or body, including any such action, suit, or proceeding related to
environmental or civil rights matters, which might result in any material adverse change in Emerald’s ability to perform its obligations under this Agreement, and no labor disturbance by the employees of Emerald exists or is imminent which might be expected to materially and adversely affect Emerald’s ability to perform its obligations under this Agreement.

(g) **Taxes.** Emerald has filed all necessary federal, state, and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon, and Emerald has no actual knowledge of any tax deficiency which has been or might be asserted against Emerald.

(h) **Disclosure.** Emerald does not have actual knowledge of any material fact which materially and adversely affects or in the future will (so far as Emerald can now reasonably foresee) materially and adversely affect Emerald’s ability to perform its obligations under this Agreement which has not been accurately set forth in this Agreement or otherwise accurately disclosed in writing to the County by Emerald prior to the date hereof.

(i) **No Third-Party Benefit.** Except as may be expressly stated herein, this Agreement is intended solely to benefit the Parties hereto and their assignees, and is not intended to provide or create, either directly or indirectly, any right or benefit for any person or other entity that is not a party to, or an assignee of, this Agreement.

(j) **Conflicts.** No officer or member of the Board of Directors of Emerald is now or will be an employee or member of the governing body of the County.

Section 3.2 **Representations of the County.** The County represents and warrants to and for the benefit of Emerald, with the intent that Emerald will rely thereon for purposes of entering into this Agreement, as follows:

(a) **Requisite Power.** The County has the requisite power to enter into this Agreement and perform its obligations hereunder.

(b) **Authorization.** This Agreement has been duly authorized, executed, and delivered by the County and, assuming due execution and delivery by Emerald, constitutes a legal, valid, and binding agreement enforceable against the County in accordance with its terms.

(c) **No Violation of Agreements.** The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof will not conflict with, or result in any breach of, any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit, or other agreement or instrument to which the County is a party or by any
regulatory body, administrative agency or other governmental body to which the County or any of its properties is subject, except any such conflict, breach, or default which would not materially and adversely affect the County's ability to perform its obligations under this Agreement.

(d) **No Defaults Under Agreements.** The County is not in default, nor is there any event in existence which, with notice or passage of time or both, would constitute a default by the County, under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit, or other agreement or instrument to which it is a party, or by which any of its properties are bound, and which default would materially and adversely affect the County's ability to perform its obligations under this Agreement.

(e) **No Litigation.** Except as previously disclosed in writing to Emerald, there is not now pending, or to the knowledge of the County, threatened, any action, suit, or proceeding to which the County is a party, before or by any court or governmental agency or body, including any such action, suit, or proceeding related to environmental or civil rights matters, which might result in any material adverse change in the County's ability to perform its obligations under this Agreement.

(f) **Disclosure.** The County has no actual knowledge of any material fact which materially and adversely affects or in the future will (so far as the County can now reasonably foresee) materially and adversely affect the County's ability to perform its obligations under this Agreement which has not been accurately set forth in this Agreement or otherwise accurately disclosed in writing to Emerald by the County prior to the date hereof.

(g) **Pursuit of Contracts for Inmates.** The County shall diligently process and enter into all lawful and necessary agreements with such User Agencies as may be necessary to facilitate the receipt and incarceration of eligible Inmates in the Facility.

(h) **Conflicts.** No member of the governing body of the County is now or will be an owner, employee, officer, or director of Emerald.

(i) **Application of Agreement.** This Agreement shall apply to all phases of the Facility and shall include the operation of any expansion of the Facility unless expressly agreed by the Parties to the contrary.

**ARTICLE IV**

**Facility**

**Section 4.1 Right of Occupancy and Use.** The County hereby grants to Emerald, subject to the terms and conditions of this Agreement, the exclusive right to occupy and use the Facility at no cost for the purposes of Emerald performing its duties under this Agreement.
Section 4.2 Assignment of Warranties. The County hereby assigns to Emerald all rights of the County, if any, to enforce warranties and guarantees relating to the goods, furniture, fixtures, or equipment forming any part or portion of the Facility.

Section 4.3 Authority of County. Anything to the contrary herein notwithstanding, and without abrogating or modifying Emerald’s responsibilities and obligations hereunder, the County has ultimate authority with respect to the operation of the Facility to achieve the essential governmental purposes for which the Facility is being constructed, which includes the furtherance of public safety for the citizens of the State of Texas. It is the intention of the parties hereto that the Facility be so operated and that at no time is the Facility to be used in the trade or business of any private persons including, but not limited to, Emerald by meeting the requirements of Rev. Proc 97-13 and Treas. Reg. 1.141-3. If any provisions herein are determined to violate this paragraph, such provisions shall be modified by the parties to comply with the covenants of this paragraph.

ARTICLE V

Duties and Authority of Emerald

Section 5.1 General Duties and Corporation: Standards. Subject to (i) the Operations Plan, and (ii) the right of the County to terminate this Agreement as provided in Article IX hereof, Emerald shall be responsible for the full and complete management and operation of the business affairs associated with the Facility relating to daily operation thereof to include, but not be limited to: incarceration services, food services, repair and maintenance services, and administration services. Emerald shall operate, maintain, and manage the Facility in compliance with all applicable federal and state constitutional requirements and laws, Court Orders, and the rules, regulations, and standards of TCJS, whether now in effect or hereafter implemented, and in accordance with the Operating Plan, and shall receive and retain a certification of compliance from TCJS, prior to operation. In the event the design or construction of the Facility does not meet TCJS standards, Emerald shall have no responsibility or obligation to correct or remedy any defect or deficiency in the design or construction of the Facility in order to meet its operational obligations under this Agreement, but shall advise and assist the County in remediying such defects or deficiencies to the extent funds are available therefor in the Project Fund. The duties and authority of Emerald hereunder shall include those set forth as follows, which are not in limitation of the foregoing:

(a) Inmate Incarceration Services. As part of the Operating Plan, Emerald shall establish policies and procedures for securing commitments from governmental authorities for the housing of Inmates at the Facility. Subject to compliance with the Operating Plan, Emerald shall have sole discretion, which discretion shall be exercised in good faith, to carry out such marketing programs as are reasonable and normal in the industry to receive Inmates at the Facility and to house such Inmates during the term of their sentence; provided, however, that Emerald shall not have any authority to perform the functions set forth in Article XII, shall return Inmates to their respective sentencing jurisdictions or to a release point.
designated by the sentencing jurisdiction prior to release from custody, shall
carry out pre-admission screening of Inmates for health risks, behavioral problems,
safety risks, serious and violent crime offenders, and escape risks, and shall
provide and make available academic programs, substance abuse counseling, and
treatment programs to the extent required by the rules and regulations of TCJS.
Emerald shall provide complete security for all Inmates at the Facility and during
routine medical appointments and emergencies. Such security shall be at least as
stringent as the standards then prevailing in the corrections industry and shall
comply with all applicable laws and regulations, including the rules and
regulations of TCJS.

(b) **Food Services.** As a part of the Operating Plan, Emerald shall establish such
policies and procedures for the providing of food services to Inmates within the
Facility, subject to applicable health code laws. Subject to compliance with the
Operating Plan, Emerald shall have the sole discretion, which discretion shall be
exercised in good faith, to contract outside services and to determine supply
resources, vendors, dietary planning within the Facility, and the number of its
employees necessary to perform these services.

(c) **Repair and Maintenance Services.** Subject to the terms hereof, Emerald shall
perform usual and customary preventative maintenance upon the physical
structure of the Facility and all tangible personal property contained therein, and
will in so doing maintain, preserve, and keep the Facility in good repair, working
order, and condition, subject to normal wear and tear. Preventative maintenance
shall be performed at the sole cost of Emerald. By utilizing funds from the
Operating Reserve/Repair/Contingency Account as described in the Lease,
Emerald will from time to time make or cause to be made all necessary and
proper repairs, replacements, and renewals, which shall thereupon become part of
the Facility. In the course of all such repairs, replacements, and renewals,
Emerald shall not create or cause to be created any lien or charge upon the
Facility or any part thereof. In the event of an emergency, which Emerald
determines in good faith to exist, Emerald is hereby authorized to complete or
contract for up to $25,000.00 in repairs, replacements, or renewals that shall be
promptly reimbursed or paid from the Operating Reserve/Repair/Contingency
Account. Emerald shall not authorize any incident of emergency repairs or
improvements to the Facility in excess of $25,000.00 without the prior consent of
the County, which consent shall not be unreasonably withheld. Emerald shall not
be obligated to expend its funds for repairs, replacements, or renewals. Only
funds available in the Operating Reserve/Repair/Contingency Account shall be
used for costs and expenses of repairs, replacements, and renewals at the Facility
that are not otherwise funded by warranty or insurance proceeds.

(d) **Administration Services.** As a part of the Operating Plan, Emerald shall establish
such policies and procedures for the general operation of the Facility and shall
create a manual setting forth the Operating Plan, copies of which shall be
provided to the County. Subject to compliance with the Operating Plan, Emerald,
acting as employer, shall have sole authority to select, hire, train, supervise, and
discharge all of its employees within the Facility. Emerald shall comply with all
applicable state or federal laws regarding employment practices within the State
of Texas and the United States of America. Emerald shall provide adequate
training of personnel employed by Emerald, which shall be at least equal to or in
excess of that training required for personnel performing the same function within
the State of Texas as required by the TCJS. All personnel employed by Emerald
at the Facility who perform security duties or who carry firearms at the Facility
shall use force and carry firearms only in accordance with the laws of the State of
Texas, rules and regulations of TCJS, and the Operating Plan.

(e) Other Services. Emerald shall also provide the following services and/or items
with respect to the Facility as and to be further set forth in the Operating Plan:

(1) Inmate laundry services and clothing;

(2) Transportation to and from local medical facilities;

(3) Health care services in compliance with the minimum standards of the
TCJS, including medical, dental, mental health, pharmaceutical, recording
keeping services, and security for any Inmate while such Inmate is
hospitalized as may be required pursuant to the terms any agreement with
a User Agency, including, but not limited to, the Marshal;

(4) Recreation and exercise program;

(5) Visitation program;

(6) Revenues derived from the operation of the commissary will be used by
Emerald in compliance with the applicable standards of the TCJS and
Section 351.0415 of the Code;

(7) Facility supplies, including hygiene items, office supplies, building
support items, and items for Inmate quarters;

(8) Safety services, including compliance with applicable safety and fire
codes and the formulation of an emergency plan and a fire prevention and
suppression plan;

(9) Sanitation services;

(10) Library and law library;

(11) Inmate correspondence;

(12) Religious services, and
(13) Imposition of discipline through rules, regulations, and order pursuant to a disciplinary system and provision of grievance procedure.

(f) **Lease.** Emerald recognizes that the County is subject to the terms of the Lease, and Emerald will use reasonable care not to cause the County to be in default under said Lease.

(g) **Emerald Equipment.** Pursuant to Emerald's obligations to manage, operate, and maintain the Facility, and in connection with all of Emerald's obligations pursuant to this Agreement, during the Term of this Agreement, Emerald shall have the sole and exclusive right, in its sole discretion and at its own expense, to install items of movable machinery and equipment in or upon the Facility, which items shall be identified by tags or other symbols affixed thereto as property of Emerald not included within the Facility and not considered or deemed to be property belonging to the County or any other entity. All such items so identified shall remain the sole property of Emerald, in which Trustee, Bondholders, and County shall have no interest, and all such items may be modified or removed by Emerald at any time, provided that Emerald shall repair and restore any and all damage to the Facility resulting from the installation, modification, or removal of any such items. Nothing in this Agreement or in the Lease Agreement shall prevent Emerald from purchasing or leasing items to be installed in or upon the Facility, pursuant to this section, under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Facility. Any equipment purchased by Emerald for use in the Facility and not paid for from Project Revenues shall remain the sole property of Emerald. At the termination of Emerald's services under this Agreement, the County shall have the right to purchase from Emerald any equipment used in the Facility and owned by Emerald at its fair market value.

Section 5.2 **Personnel.** Emerald shall select all vendors, suppliers, contractors, subcontractors, and employees with respect to operations of the Facility. All persons employed at the Facility shall be employees of Emerald and under no circumstances shall any such employee be an agent, servant, or employee of the County.

The County and Sheriff shall assist and cooperate with Emerald for purposes of obtaining such licensing as may be required by any applicable state or federal law for Emerald's employees hired to operate the Facility. The County and Sheriff shall assist and cooperate with Emerald in providing information required by Emerald in the screening of candidates for employment to the extent such information may be lawfully obtained or released under federal or state law. Any and all out-of-pocket expenses incurred by County or Sheriff in providing such assistance or information to Emerald shall be reimbursed by Emerald. The County and/or Sheriff may verify that all Emerald employees undertaking detention officer duties at the Facility are certified, as may be required, by law.
Section 5.3 **Agreements.** Emerald shall have the authority to prepare and execute all routine, reasonable, and typically required contracts for the continuance of general operations of the Facility unless otherwise specified in this Agreement, including, but not limited to, all purchases for goods and services and contracts for Inmate care within the Facility. Emerald may enter into all such contracts in the name of the Facility, so long as Emerald is clearly identified as the manager and operator of the Facility. Emerald is not, by the execution of this Agreement, accepting or assuming any liability, obligation, responsibility, or duty required by any contract, lease, or other agreement entered into, executed, or agreed to by County or any operator of any other correctional facility operated in the County. As an example only, and without limitation, Emerald does not assume, and hereby specifically rejects, any liability, obligation, responsibility, or duty required by any existing contract, lease, or other agreement relating to the following matters regarding the County Jail or any other correctional facility in the County:

(a) Food Service;
(b) Inmate Programming Services;
(c) Telephone Equipment or Services;
(d) Equipment Leases or Contracts;
(e) Commissary Services;
(f) Utility Services; and
(g) Supplies, Furniture or Fixtures

Section 5.4 **Regulations and Permits.** Emerald shall do all reasonable things necessary to maintain in full force and effect for the benefit of the Facility and the County all licenses and permits required for operations of the Facility.

Section 5.5 **Accounting and Reporting.** Emerald shall maintain a general ledger and back up accounting records typical of a commercial business enterprise covering the operations of the Facility and shall acquire and maintain in full force and effect all licenses and permits required for operation of the Facility.

Emerald shall prepare and present to County and Marshal such reports as may be required pursuant to the terms of the Marshal Contract. Emerald shall also prepare and present to County and any User Agency all reports required pursuant to any agreement with any User Agency.

Emerald will report to the County monthly on the general status and operation of the Facility at a mutually agreeable time and place. Such monthly status reports shall include, but not be limited to, a population report, including classification profile, number of admissions by referring agency, number of departures and reasons therefore, and a report of occurrences of accidents and emergencies. The County shall have access to all reports and data maintained by Emerald with respect to the operation of the Facility, subject only to the restrictions of
Section 5.6 Legal Actions. Emerald shall take prompt and reasonable actions to collect accounts due to the County as Project Revenues. Emerald shall inform the County as to delinquent accounts when such accounts become one hundred and twenty (120) days delinquent or sooner, if Emerald so determines, and shall provide the County with the necessary information to initiate legal action.

Section 5.7 Taxes. Emerald shall disburse funds as required to pay all taxes when due to include payroll taxes, sales taxes, property taxes on property owned by Emerald, or any other tax owed by Emerald, of whatever nature arising. The County specifically acknowledges and confirms that the Facility is being used for the public purpose of housing prisoners from other governmental entities. The County also acknowledges and confirms that upon the completion of the obligation to make lease payments under the Lease, the County can compel delivery of title to the Facility, and therefore it is expected that the County will be the owner and holder of the equitable title to the Facility. Because the County is expected to be the owner of the equitable title to the Facility, it is expected that the Facility will not be subject to ad valorem taxation.

Section 5.8 No County Inmates to be Housed. No County Inmates shall be assigned to the Facility without a separate written agreement establishing the per diem rate to be paid to Emerald for the housing of County Inmates.

Section 5.9 Approval of Incarceration Agreements. Emerald shall not be obligated to accept at the Facility or provide any care of any nature to any Inmate, unless the agreement between the applicable User Agency assigning the Inmate to the Facility and County has been reviewed and approved by Emerald prior to execution by County. After giving such approval, Emerald shall be obligated to perform any and all duties or obligations that County is required to perform pursuant to such agreement. The County and Emerald anticipate that County will enter into the Marshal Contract for the housing of Marshal Inmates at the Facility, and that Emerald will promptly approve the Marshal Contract and perform all the obligations of County required thereunder regarding the housing of Marshal Inmates at the Facility.

Section 5.10 Escapes. In the event a prisoner confined in the Facility escapes from the Facility, Emerald will immediately notify appropriate public law enforcement officers, including the Sheriff, of such prisoner’s escape. The public officers so notified will be solely responsible for the capture and return of the escaped prisoner.

Section 5.11 Conflicts With Other Agreements. The Marshal Contract which Emerald and County anticipate will be entered into will describe and determine how Emerald will operate and manage the Facility pursuant to the requirements of the Marshal, the terms, conditions, obligations, and statement of work contained in the Marshal Contract and other federal government regulations. If any conflict arises between the duties and obligations of Emerald as contained in this Agreement, and the duties and obligations of County as contained in the Marshal Contract, the Marshal Contract shall control in all instances. Anything to the contrary herein notwithstanding, to the extent that any covenant herein or the performance thereof
conflicts with any of the covenants or the performance thereof of the Trust Indenture or the Lease, the covenants of the Trust Indenture and the Lease shall control.

Section 5.12 Payment of Project Revenue. Emerald hereby irrevocably assigns to County any and all Project Revenue to which Emerald may be entitled to receive pursuant to any agreement with a User Agency to house Inmates at the Facility. Emerald and the County shall do all things reasonably necessary, including, but not limited to, the execution of appropriate assignments and directives, to ensure that each agreement for the housing of Inmates at the Facility shall require that the User Agency to timely send all payments for the housing of such Inmates directly to the Trustee, in compliance with the Lease.

Section 5.13 Local Purchases and Hiring. Emerald desires to have a concentration of its employees who are assigned to the Facility live in Hudspeth County, Texas. A significant number of employees living in reasonably close proximity to a facility improves response time in emergencies, provides support to the local community, and establishes a positive link between the citizens of Hudspeth County and the Facility. Emerald shall use reasonably diligent and consistent efforts to maximize the employment of personnel assigned to the Facility that live within Hudspeth County, Texas. Emerald shall open an employment office in Hudspeth County, prior to the Service Commencement Date, for the purpose of coordinating the advertisement of job openings, receipt of applications from interested personnel, applicant evaluation and selection, scheduling and coordinating pre-opening training, and conduct other and similar pre-opening activities. As part of its effort to seek out and employ residents of Hudspeth County, Emerald shall advertise for prospective employees in the local newspaper of general distribution in Hudspeth County. Additionally, Emerald shall use reasonable diligence to purchase goods and services required at the Facility from local vendors in Hudspeth County, Texas when economically feasible and reasonable to do so. Emerald shall maintain purchasing authorization at the Facility for the purchase of goods and services. Emerald shall encourage its subcontractors and suppliers to diligently seek to employ personnel that reside in Hudspeth County, and to purchase goods from local suppliers when reasonable to do so.

Section 5.14 Types of Inmates. The Facility is required by County to house Inmates detained or incarcerated by County or the State of Texas or political subdivisions thereof or federal inmates arrested in Texas under the control of federal agencies in Texas who are awaiting transfer to other facilities or other disposition under applicable federal law, and is designed for and intended to be operated to incarcerate only such Inmates. County and Emerald shall not detain, incarcerate, or accept for incarceration in the Facility any Inmates other than those detained or incarcerated by County or the State of Texas or political subdivisions thereof, and federal inmates arrested in Texas who are awaiting transfer to other facilities or other disposition under applicable federal law. Emerald and County agree that in the performance of this Agreement they shall at all times comply with Section 2.1(k) of the Lease.