

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT
Electronically filed

COMMONWEALTH OF KENTUCKY, et. al.

Plaintiffs

v.

JOSEPH R. BIDEN in his official capacity as
President of the United States, *et. al.*

Defendants

Civil Action No. 3:21-cv-
00055-GFVT

**PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs, the Commonwealth of Kentucky, the State of Ohio, and the State of Tennessee, by and through their Attorneys General; Frederick W. Stevens, in his official capacity as Sheriff for the Seneca County (Ohio) Sheriff's Office; and Scott A. Hildenbrand, in his official capacity as Sheriff for the Geauga County (Ohio) Sheriff's Office, move for a temporary restraining order under Fed. R. Civ. P. 65(b) and preliminary injunction under Fed. R. Civ. P. 65(a).

INTRODUCTION

"Get vaccinated."

President Biden ended his September remarks on the COVID-19 pandemic with these words. Joseph Biden, Remarks at the White House (Sept. 9, 2021), *available at* <https://perma.cc/GQG5-YBXK> ("Biden Remarks"). Plaintiff States have recommended the same. But the President was not recommending vaccination; he

was commanding it. Until quite recently, the Biden Administration recognized that compulsory vaccination is “not the role of the federal government.” Press Briefing by Press Secretary Jen Psaki, July 23, 2021, White House, *available at* <https://perma.cc/Q32Z-5S6M>.

But in a dramatic about-face from his prior position, the President followed his remarks by signing an order to “require more Americans to be vaccinated,” *id.*—Executive Order 14042, 86 Fed. Reg. 50,985 (Sept. 9, 2021). That order, and his Administration’s directives that have followed, impose a vaccine mandate on wide swaths of Americans.

The thin justification for the mandate asserts that it will “reduc[e] absenteeism and decreas[e] labor costs for contractors and subcontractors working on or in connection with a Federal Government contract.” *See* Determination of the Promotion of Economy and Efficiency in Federal Contracting Pursuant to Executive Order No. 14042, 86 Fed. Reg. 53,691 (Sept. 28, 2021) (“OMB Determination”). But even if the mandate *might* produce this result (and it will not), and assuming such a cursory statement constitutes reasoned decisionmaking (and it does not), the President and his Administration lacked the authority to order the mandate, and they failed to follow the administrative procedures required to issue such an order. Even in a pandemic, “our system does not permit agencies to act unlawfully even in the pursuit of desirable ends.” *Ala. Ass’n of Realtors v. Dep’t of Health and Human Servs.*, 141 S. Ct. 2485, 2490 (2021) (per curiam).

The Plaintiffs seek judicial relief from the President’s and his Administration’s unlawful and unconstitutional vaccine mandate. The mandate is unlawful for four reasons.

First, in taking either relevant executive action, the President and his Administration did not even try to satisfy the notice-and-comment procedures required by 41 U.S.C. § 1707(a)(1). They did not do so when the Office of Management and Budget (“OMB”) issued its September 28, 2021 determination without notice and comment. Likewise, the Federal Acquisition Regulatory Council (“FAR Council”) failed to provide for notice and comment before issuing its September 30, 2021 memorandum. *See* Memorandum from FAR Council to Chief Acquisition Officers et al. re: Issuance of Agency Deviations to Implement Executive Order 14042, *available at* <https://perma.cc/9BQ8-XBT6> (“FAR Council Guidance”).

Second, the President and his Administration do not possess the authority to issue the mandate under the Federal Property and Administrative Services Act (“FPASA”), *see* 40 U.S.C. § 101, *et seq.*¹ The FPASA’s delegation of power to the executive is limited in scope; Congress never provided a boundless grant of presidential rulemaking authority.

Third, the Administration must offer a rationale, and a nonarbitrary one at that, for the OMB Determination and FAR Council Guidance. The Administration cannot hide that its offered rationale—improving federal efficiency—is entirely

¹ Plaintiffs explained the FPASA’s history and purpose in more detail in its Complaint. *See* Compl. ¶¶ 77–86.

pretextual, a workaround to regulate public health having grown “frustrated with the nearly 80 million Americans who are not still vaccinated.” Biden Remarks.

Finally, the vaccine mandate runs afoul of the Constitution. The federal government lacks the authority to issue this mandate, and its attempt to do so disregards traditional principles of federalism, exceeds the spending power, and violates the nondelegation doctrine.

BACKGROUND

Executive Order 13991 – Creation of the Safer Federal Workforce Task Force

On his first day in office, President Biden signed Executive Order 13991, 86 Fed. Reg. 7,045, 7,046 (Jan. 20, 2021). Section 4 established the “Safer Federal Workforce Task Force.”² *Id.* at 7,046. The mission of the Task Force is to “provide ongoing guidance to heads of agencies on the operation of the Federal Government, the safety of its employees, and the continuity of Government functions during the COVID-19 pandemic.” *Id.*

For the first six months of the Administration, neither the Task Force nor any federal agency sought to impose vaccine mandates on the American population. As recently as July 23, 2021, the White House announced that mandating vaccines is “not the role of the federal government.” Press Briefing by Press Secretary Jen Psaki, July 23, 2021, White House, *available at* <https://perma.cc/Q32Z-5S6M>.

² The Co-Chairs of the Task Force include Defendants Ahuja, Carnahan, and Zients. *Id.*; *see also* Compl. ¶ 87. Members subordinate to the Co-Chairs include Defendants Young, Patterson, Murray, Criswell, and Walensky. *See* Compl. ¶ 87.

Executive Order 14042 – The Vaccine Mandate for Federal Contractors

On September 9, 2021, in a dramatic about-face, President Biden signed Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, 86 Fed. Reg. 50,985 (Sept. 9, 2021). The purpose of that order, and other executive actions announced that day, was to “require more Americans to be vaccinated.” *See* Biden Remarks.

Executive Order 14042 instructs departments and agencies, including independent establishments, to require that contractors and subcontractors “comply with all guidance for contractor or subcontractor workplace locations published by the . . . Task Force . . . , provided that the Director of [the OMB] approves the Task Force Guidance and determines that the Guidance . . . will promote economy and efficiency in Federal contracting.” 86 Fed. Reg. at 50,985.

The Executive Order provides a series of directives to carry out its mandate: the newly created Task Force must create procurement standards, the OMB must approve those standards under the President’s supposed FPASA authorities, and the FAR Council must recommend that agencies deviate from the Federal Acquisition Regulation before a new regulation is published. *See id.* at 50,985–88.

The Task Force’s September 24, 2021 Guidance

On September 24, 2021, President Biden’s Task Force, an invented group with no connection to federal procurement, issued its Guidance pursuant to Executive Order 14042. *See* Safer Federal Workforce Task Force, *COVID–19 Workplace Safety*:

Guidance for Federal Contractors and Subcontractors (Sept. 24, 2021), available at <https://perma.cc/2R27-9J4U> (“Task Force Guidance”).

The Task Force Guidance requires an extremely broad range of covered contractor employees to be vaccinated by December 8, 2021. For example, the FAQ section provides that the Guidance covers outdoor areas, employees who are not directly engaged in performing work called for by the covered contract, and employees who work entirely from home. *Id.* at 9-14. Only if the employee is “legally entitled to an exception,” does the Guidance not require vaccination. *Id.* at 5.

To comply with that mandate, “[c]overed contractor employees must be fully vaccinated no later than December 8, 2021.” *Id.* at 5. This means that said employees must obtain the final dose of their vaccine of choice no later than November 24, 2021. *See* Centers for Disease Control and Prevention, *Different COVID-19 Vaccines* (updated Oct. 20, 2021), available at <https://perma.cc/E3VW-PF5M> (noting that individuals are fully vaccinated two weeks after their final shot).

The OMB’s September 28, 2021 Notice of Determination

Next, the OMB issued its Notice of Determination on September 28, 2021, purportedly pursuant to the President’s delegated authority under FPASA, 40 U.S.C. § 121(a). *See* OMB Determination, 86 Fed. Reg at 53,692.

As instructed by the President in Executive Order 14042, 86 Fed. Reg. at 50,985–86, Defendant Young, in her capacity as Acting Director of the OMB, declared “that compliance by Federal contractors and subcontractors with the [Task Force Guidance] will improve economy and efficiency by reducing absenteeism and

decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract.” OMB Determination, 86 Fed. Reg. at 53,692. That’s it. The Determination did not contain any supporting analysis; it just adopted the Task Force Guidance as helpful to “promote economy and efficiency,” a rote recitation of the statute.

The FAR Council’s September 30 Memorandum and Attached Deviation Clause

The Executive Order tasked the FAR Council with “amend[ing] the Federal Acquisition Regulation,” the federal-government-wide regulation agencies must use to draft procurement solicitation and contracts, *see* 48 C.F.R. Ch. 1, to incorporate the Task Force Guidance, as approved by OMB. 86 Fed. Reg. at 50,986. The President also tasked the FAR Council with “recommending” agencies incorporate the Task Force Guidance earlier, under each agency’s authority to deviate from the existing Federal Acquisition Regulation. *Id.*

The FAR Council did just that. On September 30, 2021, the FAR Council issued its Guidance for government officials with responsibility for government contracting to assist agencies in mandating contractor and subcontractor compliance with the Task Force Guidance, prior to amending the Federal Acquisition Regulation. *See* FAR Council Guidance. The “deviation clause” attached to the FAR Council Guidance provides the text that federal contractors should use to mandate compliance with the Task Force Guidance:

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or

subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>

(d) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

Id. at 5.

Multiple agencies have already notified contractors, who have then notified subcontractors, that this language will be added to existing contracts. *See* Stevens Decl. 2–18.

The Federal Contractor Vaccine Mandate’s Disruptive Impact

Unsurprisingly, the federal contractor vaccine mandate disrupts a sizeable portion of the U.S. labor force. “Workers employed by federal contractors” account for “approximately *one-fifth of the entire U.S. labor force.*” Office of Contract Compliance Programs, Dep’t of Labor, History of Executive Order 11246, *available at* <https://perma.cc/9NF2-WX2B> (emphasis added). This section of the labor force includes significant proportions of the labor force in each Plaintiff State. According to a Kaiser Family Foundation survey, 72% of unvaccinated workers say they will quit their jobs if they are subjected to such a mandate. *See* Chris Isidore & Virginia Langmaid, *72% of unvaccinated workers vow to quit if ordered to get vaccinated*, CNN (Oct. 28, 2021), *available at* <https://perma.cc/7JMV-SULY>. This finding portends a massive disruption in the economy and to the operations of Plaintiffs, as well as the

millions of citizens served by Plaintiffs. *See* Compl. ¶¶ 1–48; Niknejad Decl. ¶¶ 4–12.

ARGUMENT

When ruling on a preliminary injunction, the Court must consider:

1) whether the movant has shown a strong likelihood of success on the merits; 2) whether the movant will suffer irreparable harm if the injunction is not issued; 3) whether the issuance of the injunction would cause substantial harm to others; and 4) whether the public interest would be served by issuing the injunction.

Tabernacle Baptist Church, Inc. of Nicholasville v. Beshear, 459 F. Supp. 3d 847, 853 (E.D. Ky. 2020). “These factors are not prerequisites, but are factors to be balanced against each other.” *Overstreet v. Lexington-Fayette Urban Cty. Gov’t*, 305 F.3d 566, 573 (6th Cir. 2002). However, where, as here, a violation of the Constitution is alleged, the first factor—the likelihood of success on the merits—largely dominates the analysis. *See City of Pontiac Retired Emps. Ass’n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014) (en banc) (per curiam). Even so, all four factors decidedly favor granting a temporary restraining order and preliminary injunction to preserve the status quo.

I. The Plaintiffs are likely to succeed on the merits.

The actions of the Administration violate administrative and procurement law and pose serious constitutional questions. The OMB and the FAR Council have acted contrary to procedure required by law in imposing the vaccine mandate. The OMB acted contrary to law in attempting to circumvent the FAR Council, the only entity Congress has authorized to make government-wide procurement regulations. In

addition, by failing to include any rationale for their actions (much less a logical one), The OMB and the FAR Council acted arbitrarily and capriciously. Finally, the vaccine mandate intrudes on an area traditionally reserved to the States (public health and safety), and wrongly assumes that Congress delegated the President unfettered discretion to control federal contracts (a delegation Congress lacks the power to make).

A. The OMB Determination and FAR Council Guidance were issued in violation of procedure required by law.

Under the Administrative Procedure Act (APA), a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

The President grounded the authority for his Administration’s actions in the FPASA. *See* 86 Fed. Reg. at 50985. The purpose of that Act, among other things, “is to provide the Federal Government with an economical and efficient system for . . . [p]rocuring and supplying . . . nonpersonal services[.]” 40 U.S.C. § 101(1). But:

[A] procurement policy, regulation, procedure, or form (including an amendment or modification thereto) may not take effect until 60 days after it is published for public comment in the Federal Register . . . if it—

(A) relates to the expenditure of appropriated funds; and

(B)(i) has a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form; or

(ii) has a significant cost or administrative impact on contractors or offerors.

41 U.S.C. § 1707(a).³

Section 1707(a) controls here.⁴ To start, with his invocation of the FPASA as the statutory authority for his Administration’s vaccine mandate, *see* 86 Fed. Reg. at 50,985, the President agrees his Administration’s actions are “procurement polic[ies], regulation[s], procedure[s], or form[s].” *See* 41 U.S.C. § 1707(a). Federal contracts involve the expenditure of appropriated federal funds, and the vaccine mandate has both a significant effect beyond the internal operating procedures of the agencies and a significant cost and administrative impact on the Plaintiffs. *See* Compl. ¶¶ 1–48; Niknejad Decl. ¶¶ 4–12; Maddox Decl. ¶¶ 5–11. The OMB Determination, which approves the vaccine mandate as a government-wide procurement policy, and the FAR Council guidance, which works to require⁵ that agencies incorporate the vaccine mandate in current contracts, were bound to follow Section 1707.

The Defendants entirely failed to publish the FAR Council Guidance in the Federal Register. And although the Defendants published the OMB Determination in the Federal Register, it was not subject to comment, nor the requisite 60-day

³ Similarly, “proposed significant revisions” to the Federal Acquisition Regulation must undergo notice and comment. *See* 48 C.F.R. § 1.501–2(b); *see also* 48 C.F.R. § 1.501–1 (defining “significant revisions” essentially by the same test outlined in § 1707(a)).

⁴ The Plaintiffs invoke both 41 U.S.C. § 1707 and 5 U.S.C. § 553 but focus on § 1707 because it is more stringent.

⁵ While the FAR Council claims to be issuing only “guidance,” the guidance is being “applied . . . in a way that indicates it is binding.” *Texas v. EEOC*, 933 F.3d 433, 441 (5th Cir. 2019) (explaining that agency action treated as binding is reviewed as a regulation). Even if it were not binding, it is still a procurement “policy” subject to § 1707’s requirements.

comment period before becoming effective. Nothing indicates that Defendants invoked Section 1707(d)'s waiver of the notice and comment requirement, or waiver of notice and comment under the APA.⁶ In short, Defendants failed to adhere to the process mandated by law, and their mandate is without observance of procedure required by law, and must therefore be set aside. *See* 5 U.S.C. § 706(2)(D).

B. The Administration acted contrary to law.

Under the APA, a court must “hold unlawful and set aside agency action” that is “not in accordance with law” or “in excess of statutory . . . authority, or limitations, or short of statutory right.” *See* 5 U.S.C. § 706(2)(A), (C).

a. The President does not have the authority to issue procurement regulations under the FPASA.

Only the FAR Council has the authority to “issue and maintain . . . a single [g]overnment-wide procurement regulation.” 41 U.S.C. § 1303(a)(1). Despite this, the Executive Order asks OMB to issue a government-wide procurement regulation mandating vaccines. 86 Fed. Reg. at 50,985–96. That violates Section 1303. The OMB Determination also violates Section 1303 in carrying out the President’s unlawful instruction. 86 Fed. Reg. at 53,591–92. And the FAR Council Guidance violates Section 1303 because it abdicates the FAR Council’s responsibility to issue government-wide procurement regulations, instead issuing cursory guidance about what agencies are “required” to do. FAR Council Guidance at 2.

⁶ Or waiver of notice and comment under 48 C.F.R. § 1.501–3.

The President instead invoked the FPASA, 40 U.S.C. § 101 *et seq.*, as his authority for issuing the federal contractor vaccine mandate. *See* 86 Fed. Reg. at 50985. To start, the FPASA does not grant the President the power to issue orders with the force or effect of law. Congress authorized the President only to “prescribe policies and directives that the President considers necessary to carry out.” *See* 40 U.S.C. § 121(a). “Policies and directives” describe the President’s power to direct the *exercise* of procurement authority throughout the government. *See Centralizing Border Control Policy Under the Supervision of the Attorney General*, 26 Op. O.L.C. 22, 23 (2002) (“Congress may prescribe that a particular executive function may be performed only by a designated official within the Executive Branch, and not by the President.”). It does not authorize the President to issue regulations himself.

We know this because Congress authorized the Administrator of the General Services Administration—in the same section of the statute—to “prescribe regulations.” *Id.* at § 121(c); *see also Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (“[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.”). Not only that, Congress gave the President, in another section of the FPASA, the power to “prescribe *regulations* establishing procedures to carry out” the establishment of motor vehicle pools and transportation systems. 40 U.S.C. § 603(b)(1) (emphasis added). And Congress has given the President the power to “prescribe regulations” in other contexts, typically in the realm of foreign affairs and national defense. *See, e.g.*, 18 U.S.C. § 3496 (“The President is authorized to prescribe

regulations governing the manner of executing and returning commissions by consular officers.”); 32 U.S.C. § 110 (“The President shall prescribe regulations, and issue orders, necessary to organize, discipline, and govern the National Guard.”).

Regardless the FPASA does not authorize the President, and thus does not authorize the OMB, to issue whatever contracting requirement they think is “economical” or “efficient.”⁷ The President seems to assume that the FPASA’s prefatory statement of purpose authorizes him and his delegates to issue any order they believe promotes “an economical and efficient” procurement system. 40 U.S.C. § 101; *see* 86 Fed. Reg. at 50,985 (“This order promotes economy and efficiency in [f]ederal procurement.”). In doing so, the President and OMB mistakenly construe the prefatory purpose statement for a grant of authority. *Dist. of Columbia v. Heller*, 554 U.S. 570, 578 (2008) (“[A]part from [a] clarifying function, a prefatory clause does not limit or expand the scope of the operative clause.”); *see also Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 n.9 (D.C. Cir. 1995) (“[T]he agency may not simply disregard the specific scheme Congress has created . . . in order to follow a broad purpose statement.”).

⁷ To be sure, there is authority embracing a broader reading of the FPASA, principally *AFL-CIO v. Kahn*, 618 F.2d 784 (D.C. Cir. 1979), and its progeny. But *Kahn* is wrongly decided. Invoking the purpose statement in § 101, *Kahn* considers whether the President can impose wage and price standards on contractors based on the “‘economy and efficiency’ touchstone” of the FPASA. *Kahn*, 618 F.2d at 788, 793. In addition to misreading § 101 as a grant of authority, the court conflates the FPASA’s legislative history with its statutory text, *id.* at 788–89 n. 22–24, and turns basic statutory interpretation on its head by treating specific examples in which Congress authorized the use of the contracting power to advance policy—for example, setting aside certain purchases for small businesses—as evidence that Congress authorized the President to do so unilaterally in unrelated circumstances, *id.* at 789 & n.25.

Indeed, the grant of authority to the President in FPASA is quite narrow. Beyond the fact that he is not authorized to issue regulations, his power is limited to prescribing policies and directives he “considers necessary to carry out this subtitle.” 40 U.S.C. § 121(a) (emphasis added). “Necessary” is a “word of limitation” and is synonymous with “required,” “indispensable,” and “essential.” *Vorcheimer v. Phila. Owners Assoc.*, 903 F.3d 100, 105 (3d Cir. 2018); *accord In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 327 (4th Cir. 2004). The President’s authority is therefore limited to that which he considers “essential” or “indispensable” to carry out the FPASA.

And even if the FPASA did authorize the President to issue binding procurement orders in the name of economy and efficiency, the nexus between the OMB Determination and goal of the statute is far too attenuated. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281, 304, 308 (1979). Even courts that adopt a broader reading of the President’s power require a “reasonably close nexus between the efficiency and economy criteria of the [FPASA] and any exactions imposed upon federal contractors.” *Liberty Mut. Ins. Co. v. Friedman*, 639 F.2d 164, 170 (4th Cir. 1981).

To that end, the 210-word OMB Determination lacks any explanation indicating how the Task Force Guidance creates contracting efficiencies. *See* OMB Determination, 86 Fed. Reg. at 53,691–92. Indeed, the opposite will occur. *See* Niknejad Decl. ¶¶ 4–12; Maddox Decl. ¶¶ 5–11; Compl. ¶¶ 1–48. Employers must spend time and resources determining who does or does not fall under the mandate.

Employees who wish to be vaccinated must be given time off to receive and to recover from effects of the vaccine. Employees who do not wish to be vaccinated must prove they qualify for an exemption. *See* Task Force Guidance at 1. Employers must process those requests, which will involve difficult decisions, and will certainly lead to litigation. *See* Karl Evers-Hillstrom, *9 in 10 Employers Say They Fear They'll Lose Unvaccinated Workers Over Mandate: Survey*, The Hill (Oct. 18, 2021), available at <https://perma.cc/V5ZJ-7XUQ>. Many employees whose exemption requests are denied will quit. *See* Jordan Burrows, *Employees Not Given Exemption Prefer to Quit Job Than Get COVID Vaccine, Poll Shows*, Salt Lake City (ABC4) (Sept. 15, 2021), available at <https://perma.cc/6A95-CJXD>; *see also* Isidore & Langmaid, *supra*. Employers will have to find new employees, likely at great cost given the many employers currently looking for employees. There is no explanation whether, or how, this egregious effort is outweighed by unidentified contracting efficiencies.

b. The President and his Administration's actions run afoul of the Competition in Contracting Act.

Federal agencies are required to provide for “full and open competition through the use of competitive procedures” in procurement. 41 U.S.C. § 3301(a)(1). The President’s authority under the FPASA is expressly subject to that requirement. *See* 40 U.S.C. § 121(a) (requiring “policies” issued by the President pursuant to FPASA to be “consistent with this subtitle”); 40 U.S.C. § 111 (defining “this subtitle” to include portions of Title 41, including § 3301).

The challenged actions violate that provision because they “effectively exclude[] an offeror from winning an award, even if that offeror represents the best

value to the government.” *Nat’l Gov’t Servs., Inc. v. United States*, 923 F.3d 977, 990 (Fed. Cir. 2019). The Defendants refuse to consider the specific situation of particular bidders, instead categorically excluding contractors that refuse to acquiesce to the Administration’s sweeping COVID policies. By excluding an entire class of contractors without regard to their ability to perform the contract, the challenged actions violate Section 3301.

C. The Administration acted arbitrarily and capriciously.

Under the APA, a court must “hold unlawful and set aside agency action” that is “arbitrary [or] capricious.” 5 U.S.C. § 706(2)(A). “The APA’s arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). Courts must ensure “the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.” *Id.* The APA also requires that agency action take into account the reliance interests of those affected by the regulatory action, including the States. *See Dep’t of Homeland Security v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1913-15 (2020). Here, the federal contractor vaccine mandate fails to satisfy these criteria.

As mentioned, neither the OMB Determination nor the FAR Council Guidance provide any explanation for how they promote economy and efficiency in procurement. *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2127 (2016) (“Whatever potential reasons the Department might have given, the agency in fact gave almost no reasons at all. . . . [C]onclusory statements do not suffice to explain

[an agency’s] decision.”). Defendants seemingly failed to consider the possibility that their actions would cause a labor shortage. *See Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 664, 658 (2007) (explaining that an agency decision is arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem” (quoting *Motor Vehicle Mfrs. Ass’n of U.S. v State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983))); *see also* Compl. ¶¶ 1–48 (outlining the negative economic effects of the mandate); Niknejad Decl. ¶¶ 4–12; Maddox Decl. ¶¶ 5–11. These concerns are particularly acute for the Plaintiff States and Plaintiff Sheriffs whose federal contracts directly relate to public safety and staffing shortages in already understaffed detention centers. *See* Compl. ¶¶ 4–7, 22–39; *see also* Niknejad Decl. ¶¶ 4–12; Stevens Decl. 2–18; Hildenbrand Decl. 2–29; Maddox Decl. ¶¶ 5–11.

Additionally, both the OMB Determination and FAR Council Guidance ignore costs to the Plaintiffs, a “centrally relevant factor when deciding whether to regulate.” *Michigan v. EPA*, 576 U.S. 743, 752–53 (2015). The agencies ignored Plaintiffs’ “legitimate reliance” on the absence of a federal mandate which allowed them to act in accordance with setting their own policies. *See Regents of Univ. of Calif.*, 140 S. Ct. at 1913. The Task Force Guidance, the OMB Determination, and the FAR Council Guidance fail to reflect even a minimal awareness that the mandate will undermine Plaintiffs’ reliance interest and impose significant disruption into their economies and operations. *See* Niknejad Decl. ¶¶ 4–12; Compl. ¶¶ 1–48.

Moreover, neither the OMB Determination nor the FAR Council Guidance considers lesser alternatives to a vaccine mandate. *See Regents of the Univ. of Cal.*,

140 S. Ct. at 1913–14.

And the fact that the Task Force continues to change and update its guidance, *see* Safer Federal Workforce: What’s New?, *available at* <https://perma.cc/MB3M-397A> (last visited Nov. 4, 2021), signals a knee-jerk, unsubstantiated mandate.

Finally, the conclusion that the Task Force Guidance and FAR Council Guidance will improve procurement efficiency by reducing absenteeism and decreasing labor costs is blatantly pretextual. *See Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2576 (2019) (“Accepting contrived reasons would defeat the purpose of the enterprise [of judicial review.]”). As described earlier, the President, in his remarks announcing the executive order, stated that he was “frustrated with the nearly 80 million Americans who are still not vaccinated,” referred to “overcrowd[ed] . . . hospitals” and “overrun[] . . . emergency rooms,” and blamed “elected officials actively working to undermine the fight against COVID-19.” *See* Biden Remarks. The FAR Council Guidance likewise admits that the goal of this effort is “getting more people vaccinated and decreas[ing] the spread of COVID-19.” FAR Council Guidance at 3. The vaccine mandate was never about procurement efficiency—it is about public health, which falls outside the scope of the FPASA.

D. The Administration’s mandate runs afoul of the Constitution.

“[E]ven in a pandemic, the Constitution cannot be put away and forgotten.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020). Yet, in addition to being procedurally and substantively unlawful, the federal contractor mandate also violates three key constitutional limitations on federal government power. First,

a federal contractor vaccine mandate upends time-honored principles of federalism and separation of powers. Second, binding federal contractors to ever-shifting guidance violates traditional limitations on the federal government's spending power. Third, any interpretation of the FPASA that enables the President to set national vaccine policy violates the nondelegation doctrine.

1. The federal contractor vaccine mandate violates the federalist system enshrined in our Constitution.

The Administration's shifting mandate intrudes on an area traditionally reserved to the States. The Tenth Amendment provides that powers not expressly delegated to the federal government are reserved to the States or the people. U.S. Const. amend. X. Unlike the state governments, the federal government "must show that a constitutional grant of power authorizes each of its actions." *Nat'l. Fed. of Ind. Bus. v. Sebelius*, 567 U.S. 519, 535 (2012). By contrast, the States maintain the "general power of governing," referred to as the "police power." *Id.* at 536.

Although "[t]he regulation of health and safety matters is primarily and historically, a matter of local concern," the contractor mandate attempts to claim this as a federal power, and in so doing, overturns the balance of power promised in the Tenth Amendment. *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985).

The federal government has no general police power, and nothing in the Constitution gives the federal government the power it seeks to exercise here. It has no innate authority to impose wide-reaching public health measures, which are instead powers reserved to the States. But instead of respecting the time-honored

principles of federalism, the federal government is trying to trample this traditional state power. Federal procurement laws do not trump the sovereign States' police power.

2. The mandate exceeds Congress's spending power.

When exercising its spending authority, the federal government is limited in several key ways. As relevant here, the government must “state all conditions on the receipt of federal funds ‘unambiguously’ so as to ‘enabl[e] the states to exercise their choice knowingly.’” *Cutter v. Wilkinson*, 423 F.3d 579, 585 (6th Cir. 2005) (quoting *South Dakota v. Dole*, 483 U.S. 203, 207 (1987)).

The mandate provides no clarity at all. The executive order contemplates that the Task Force may continually issue guidance, approved by OMB, that agencies must require contractors to comply with. 86 Fed. Reg. at 50,985–87. Indeed, the deviation clause that agencies have already begun to incorporate into their contracts requires contractors (and therefore subcontractors) to “comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract.” FAR Council Guidance at 5; *see also* Stevens Decl. 2–18. As the guidance on the website changes frequently, *see* Safer Federal Workforce: What's New?, *available at* <https://perma.cc/MB3M-397A> (last visited Nov. 4, 2021), the agencies have already failed to provide the clarity required in imposing federal spending conditions.⁸ The federal government is trying to force states to

⁸ Moreover, to the extent the government seeks to require compliance with “updates” to the Task Force guidance that the OMB Director has not approved, this raises

implement ever-changing public health measures, a clear violation of its spending power.

3. Construing federal procurement law to authorize vaccine mandates violates the nondelegation doctrine.

The nondelegation doctrine prevents Congress from delegating major policy questions to the executive without a clear and intelligible principle. *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019). The Constitution states, “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” U.S. Const. art. I, § 1. To that end, “major national policy decisions must be made by Congress and the President in the legislative process, not delegated by Congress to the Executive Branch.” *Paul v. United States*, 140 S. Ct. 342, (2019) (Mem.) (Kavanaugh, J., respecting the denial of certiorari) (citing *Industrial Union Dept., AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 685–686 (1980) (Rehnquist, J., concurring in judgment)). Thus, “Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable.” *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537–38 (1935).

The Biden Administration’s purported statutory basis for its vaccine mandate—FPASA—lacks any intelligible principle if interpreted so loosely as to bless the Administration’s practices here. Congress enacted the FPASA to provide the

additional issues, including the Task Force’s absence of authority, the fact that delegations under 3 U.S.C. § 301 must be made to officials appointed by the President and confirmed by the Senate, and the fact that the Task Force includes officials not appointed pursuant to the Appointments Clause.

federal government with an “economical and efficient” procurement system. 40 U.S.C. § 101. Congress authorized a subpart of the OMB to “issue policy directives . . . for the purpose of promoting the development and implementation of [a] uniform procurement system.” See Office of Federal Procurement Policy Amendment of 1979, Pub. L. No. 96-83, § 4(e), 93 Stat. 650. Each time Congress issued procurement instructions, its focus was on efficient purchasing, not mandating healthcare decisions.

The policy decision at issue here, whether to coerce millions of American workers to receive a vaccine, has no basis in the text of the FPASA. Instead, it is a major policy decision which must be made by Congress (assuming Congress has the authority in the first place). If the FPASA is so broad as to provide the Biden Administration with statutory authority to regulate public health, it lacks any intelligible principle and violates the nondelegation doctrine.

II. The Plaintiffs will be irreparably harmed absent an injunction.

Absent an injunction, Defendants will continue to intrude on the States’ sovereign authority, violate the United States Constitution, violate federal statutory law, and cause unrecoverable damages to the Plaintiffs. All of these injuries are irreparable.

First, absent an injunction, the Defendants, acting in concert to impose the mandate, will irreparably harm the Plaintiff States by intruding on their sovereign authority to enact and enforce laws and policies that conflict with the mandate. As President Biden made clear in his announcement, his goal is to override any State

policies that conflict with the Administration’s priorities, declaring that, if faced with States who disagree, “I’ll use my power as President to get them out of the way.” *See* Biden Remarks, *supra*. A State “suffers a form of irreparable injury” any time it is prevented from “effectuating” laws “enacted by representatives of its people.” *Thompson v. DeWine*, 976 F.3d 610, 619 (6th Cir. 2020) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 & n.17 (2018) (same).

Here, the mandate intrudes upon the Plaintiff States’ sovereign authority to enact and enforce their own statutes, executive orders, and policies in response to the COVID-19 pandemic to protect vast swaths of their citizenry that will now be forced to undergo vaccination or lose their jobs under the mandate. Each State has enacted its own laws and policies—or declined to issue certain mandates—in a way that balances the need for public health, the rights of its citizens, and the health of its economy—which is itself an important tool to increasing public health. *See* Niknejad Decl. ¶¶ 10–11. Obviously, these issues are often politically sensitive and controversial, yet the Defendants, led by the President, have attempted to remove them from consideration by locally accountable political officials.

Second, all Plaintiffs suffer irreparable harm from the violation of the constitutional structure. “When constitutional rights are threatened or impaired, irreparable injury is presumed.” *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 407 (6th Cir. 2017) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012)); *ACLU v. McCreary Cnty.*, 354 F.3d 438, 445 (6th Cir. 2003). A constitutional

violation, “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In addition to exceeding the federal government’s enumerated power, the vaccine mandate violates the principles of federalism enshrined in the Tenth Amendment and separation of powers required by the nondelegation doctrine and limits to the Spending Clause. These constitutional violations constitute irreparable harm.

Third, the mandate irreparably denies Plaintiffs their statutory rights of notice and comment under 41 U.S.C § 1707 and the APA, given the way in which Defendants are trying to impose it. The Plaintiff States not only have standing to challenge these unlawful actions as employers but also on behalf of their citizens in their *parens patriae* capacity. *See Massachusetts v. EPA*, 549 U.S. 497, 520, n. 17 (2007) (noting that states have *parens patriae* standing to assert federal rights on behalf of their citizens). The FAR Council Guidance demands that all federal agencies employ a FAR Deviation Clause into new federal contracts and bid solicitations that bind the contractor to comply with a vaccine mandate and other requirements set forth in the Task Force Guidance. *See FAR Council Guidance* at 1–5; Stevens Decl. 2–18. All this is to be done before the FAR Council, the only agency with statutory authority to issue government-wide procurement regulations, does so properly. *See* 41 U.S.C. § 1303(a). The OMB Determination purporting to approve the Task Force Guidance as a procurement policy has not been subject to public input through the notice and comment. Before the FAR Council can even issue a regulation commanded by the Executive Order, Plaintiffs and other employers within the

Plaintiff States face the decision to fire vaccine hesitant employees or lose federal contract opportunities. *See* Niknejad Decl. ¶¶ 4–12; Maddox Decl. ¶¶ 5–11. The damage will already be done at that point. It is irrelevant what the final FAR Council regulation may be, or whether the Court concludes on the merits that the FAR Council and President never had authority to issue a vaccine mandate under federal procurement statutes in the first place.

Fourth, Plaintiffs will suffer irreparable economic harm caused by loss of contracts with the federal government. *See Alfred v. Snapp & Sons, Inc. v. Puerto Rico*, 458 U.S. 592, 601-02 (1982) (finding that a state has standing to protect its proprietary interests in court). Plaintiff States also face lost business income tax revenue as some employers may not have a sufficiently vaccinated workforce to bid on federal contracts and bring business into their states. Though these harms normally do not constitute irreparable harm when the amount lost “may be recovered through monetary damages,” where the loss of funds cannot be recovered or have impaired a plaintiff’s programs, such harm constitutes irreparable injury. *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016); *see also Mrs. Fields Franchising, LLC v. MFGPC*, 941 F.3d 1221, 1235 (10th Cir. 2019) (finding “diminishment of competitive positions in marketplace” and “loss of employees’ unique services” as factors supporting irreparable harm).

Here, because of the federal government’s sovereign immunity, Plaintiffs likely cannot recover damages for lost contract opportunities resulting from the mandate, even if the court finds that it acted unlawfully. *Cf.* 5 U.S.C. § 702 (allowing “relief

other than money damages”); 28 U.S.C. § 2680 (excluding monetary claims “based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid”). These damages, irrecoverable due to sovereign immunity, constitute irreparable harm. *See Kentucky v. United States*, 759 F.3d 588, 599–600 (6th Cir. 2014) (finding irreparable harm where “sovereign immunity bars” granting damages). Plaintiffs’ irrecoverable economic harm constitutes yet another irreparable injury they will suffer if this Court does not enjoin the Defendants.

III. Enjoining the mandate will promote the public interest.

“Forcing federal agencies to comply with the law is undoubtedly in the public interest.” *Cent. United Life, Inc. v. Burwell*, 128 F. Supp 3d 321, 330 (D.D.C. 2015). The public has an interest in a proper functioning of the federal government within our constitutional Republic. The Biden Administration has flouted its constitutional duty to faithfully execute the law. This is not the first time, straining public trust in our system of government. For example, President Biden admitted an expiring “eviction moratorium” issued by the Centers for Disease Control and Prevention was unlawful, but re-issued it anyway. *See Kaylee McGhee White, Biden admits he is proudly and deliberately breaking the law*, Washington Examiner (Aug. 8, 2021) available at <https://perma.cc/THJ3-824E>. Such actions, without an injunction, severely undermine our democracy.

The public has a right to a lawful government and this Court has the power and duty to preserve the rule of law and the public trust, especially where

constitutional principles are at stake. *See G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” (citing *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 382 (1979))).

An injunction additionally promotes the public interest by protecting the authority of States to respond to COVID-19 pandemic conditions particular to their own jurisdictions, and by preventing the nationwide confusion and economic upheaval that the mandate threatens.

Unless in conflict with individual citizens’ constitutional rights, each State has the authority to respond to the COVID-19 pandemic as its elected officials deem proper. It is “in the public interest” that courts “give effect to the will of the people by enforcing the laws they and their representatives enact.” *Thompson*, 976 F.3d at 619. This interest is “particularly” strong when “considerable disagreement exists about how best to accomplish” a challenge confronting the nation. *United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring). “In this circumstance, the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions.” *Id.*; *see New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

Since the beginning of the COVID-19 pandemic, Plaintiff States have fulfilled their function as laboratories of democracy. Each State has responded to the ebbs and flows of the pandemic. What was necessary at times in one State might not have been necessary, or may have become unnecessary, in others. And each State has

encouraged its eligible citizens to get vaccinated. Tens of millions have done so voluntarily. But the vaccine mandate at issue here, along with federal vaccine mandates issued by other agencies, threatens to scrap this federalist solution to the pandemic's challenges by turning the entire country into one "single laboratory of experimentation." Jeffrey S. Sutton, *51 Imperfect Solutions: States & the Making of American Constitutional Law* 216 (2018). Only an injunction of the one-size-fits-all mandate will restore the constitutionally-guaranteed flexibility of Plaintiff States to respond to the pandemic.

An individualized approach, by state, is in the public interest. Vaccine mandates in other States have already exacerbated worker shortages. *See, e.g.,* Maria Caspani & Nathan Layne, *New York Hospitals Fire, Suspend Staff Who Refuse COVID Vaccine*, Reuters (Sept. 28, 2021), *available at* <https://perma.cc/8DXR-ZVWT> ("[S]taff shortages prompted some hospitals to postpone elective surgeries or curtail services."). Employers are already facing enormous challenges as they respond to the COVID-19 pandemic while continuing to provide employment, goods, and services to our local and national economy. And many employees' finances are already stretched thin from lost wages during COVID-19 shutdowns. Now, the federal government has threatened them with the loss of their livelihoods if they do not comply with this vaccine mandate or others issued by the Biden Administration. An injunction will preserve the status quo for employers and employees. Absent an injunction, the nation faces a severe economic slowdown with ramifications from coast to coast.

Defendants, meanwhile, will suffer no harm if this Court grants an injunction.

Because the mandate is procedurally and substantively unlawful, Respondents have no valid interest in enforcing it. *Deja Vu of Nashville, Inc. v. Metro. Gov't*, 274 F.3d 377, 400 (6th Cir. 2001) (“[I]f the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere in its enjoinder[.]”); *see also League of Women Voters*, 838 F.3d at 12 (“There is generally no public interest in the perpetuation of unlawful agency action.”). And the Delta variant—President Biden’s stated rationale almost two month ago for ordering this mandate and others—has already receded from many States. *See* Biden Remarks; *see also* John Cheves, *Kentucky’s COVID numbers continue their plunge to lowest in 11 weeks as surge recedes*, Lexington Herald-Leader (Oct. 25, 2021), available at <https://www.kentucky.com/news/coronavirus/article255273276.html>; Centers for Disease Control and Prevention, *COVID Data Tracker Weekly Review*, available at <https://perma.cc/A7HG-P3AW>.

IV. No bond is required under Fed. R. Civ. P. 65.

A bond is required under Fed. R. Civ. P. 65 to “pay the costs and damages sustained by any party found to have been wrongfully enjoined.” No bond should be required here since the Defendants are agencies and officials of the United States who will not incur damages or cost during the pendency of this action. *See Static Controls Components, Inc. v. Lexmark Intern., Inc.*, 697 F.3d 387, 400-01 (6th Cir. 2012) (noting that a court has broad discretion in setting the bond amount, and may decline to order a bond at all).

CONCLUSION

For the aforementioned reasons, the Plaintiffs respectfully request the Court enjoin the Defendants' federal contractor vaccine mandate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on November 8, 2021, the above document was filed with the CM/ECF filing system, which electronically served a copy to all counsel of record, and by sending a copy by first-class United States mail to the following:

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Counsel for the Commonwealth

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT
Electronically filed

COMMONWEALTH OF KENTUCKY, et. al.

Plaintiffs

v.

JOSEPH R. BIDEN in his official capacity as
President of the United States,, *et. al.*

Defendants

Civil Action No. 3:21-cv-
00055-GFVT

DECLARATION OF N. ANTONIO NIKNEJAD

Pursuant to 28 U.S.C. § 1746, I, N. Antonio Niknejad duly affirm under penalty of perjury as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. I serve as the Policy Director to Bill Lee, Governor of the State of Tennessee. In this role, I serve as a member of the Governor's cabinet and am responsible for leading the development of the Governor's policy agenda, which includes tax policy, spending, our response to federal policies and other interactions with the federal government, including federal contracts.

3. I have reviewed the Executive Order 14042, 86 Fed. Reg. 50,985 (Sept. 9, 2021); Determination of the Promotion of Economy and Efficiency in Federal Contracting Pursuant to Executive Order No. 14042 ("OMB Determination"), 86 Fed.

Reg. 53,691 (Sept. 28, 2021); Safer Federal Workforce Task Force's September 24, 2021 guidance ("Task Force Guidance"); and, the Federal Acquisition Regulatory Council's Memorandum ("FAR Council Guidance"), *see* Memorandum from FAR Council to Chief Acquisition Officers et al. re: Issuance of Agency Deviations to Implement Executive Order 14042, (Sept. 30, 2021), *available at* <https://perma.cc/9BQ8-XBT6> (last visited Nov. 2, 2021).

4. The State of Tennessee, through its agencies and its political subdivisions, routinely contracts with the federal government. These contracts include agreements with federal agencies that exceed the simplified acquisition threshold.

5. The State of Tennessee, through its agencies and its political subdivisions, engages in a wide range of federal contracts, including but not limited to those that relate to staffing assistance, research, regulatory program agreements, leases of and access to federal real property, and agreements for data and information sharing.

6. These contracts benefit millions of Tennesseans by providing vital services and resources and by providing employment to thousands of Tennessee's citizens.

7. The State of Tennessee expects to continue pursuing government contracts in the future.

8. The State of Tennessee has current contracts subject to renewal or the exercise of options after October 15, 2021.

9. The mandate set forth in Executive Order 14042, the OMB Determination, the Task Force Guidance, and the FAR Council Guidance threatens the State of Tennessee with the loss of millions of dollars in future contracting opportunities and will put undue pressure on the State of Tennessee to create new policies, which threatens irreparable harm.

10. Public employees are generally not required to be vaccinated under the laws of the State of Tennessee.

11. In fact, Tennessee law states that “[t]he governor shall not issue an executive order, a state agency or department shall not promulgate a rule, and a political subdivision of this state shall not promulgate, adopt, or enforce an ordinance or resolution that requires a person to receive an immunization, vaccination, or injection for the SARS-CoV-2 virus or any variant of the SARS-CoV-2 virus.” Tenn. Code Ann. § 68-5-115.

12. The mandated vaccination requirement for employees of federal contractors presents both logistical and financial burdens for the State of Tennessee as the State and its agencies will be required track and manage verification of vaccination status, review and make determinations on accommodation requests, implement all accommodations granted, and possibly take steps to ensure separation of covered and non-covered employees.

13. The statements in this Declaration are based on my personal knowledge of information provided to me in my official capacity.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.



N. Antonio Niknejad

11/08/21

Date

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF KENTUCKY

COMMONWEALTH OF KEN-
TUCKY, et al.

Plaintiffs,

v.

JOSEPH R. BIDEN, et al.,

Defendants.

Civil Action No. 3:21-cv-00055-
GFVT

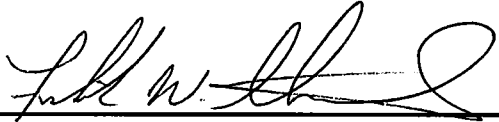
DECLARATION OF FREDRICK W. STEVENS

I, Fredrick W. Stevens, make the following Declaration pursuant to 28 U.S.C. §1746, and state that under the penalty of perjury the following is true and correct to the best of my knowledge and belief.

1. I am the Sheriff of Seneca County.
2. My office has entered into a contract with the United States Department of Homeland Security to provide housing for Immigrations and Customs Enforcement detainees.
3. A copy of the contract is attached as Exhibit A.
4. I was notified that the contract will be modified to subject my office to the federal government's vaccine mandate for government contractors.
5. A copy of the notice of modification is also attached as Exhibit B.

I have read the following, and it is all true and correct.

11-5-2021
Dated


Fredrick W. Stevens
Seneca County Sheriff

IGSA #DROIGSA-07-0035
INTER-GOVERNMENTAL SERVICE AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
OFFICE OF DETENTION AND REMOVAL
AND
SENECA COUNTY JAIL, TIFFIN, OHIO

This Inter-Governmental Service Agreement ("Agreement") is entered into between United States Department of Homeland Security Immigration and Customs Enforcement ("ICE"), and SENECA COUNTY JAIL ("Service Provider") for the detention and care of aliens ("detainees"). The term "Parties" is used in this Agreement to refer jointly to ICE and the Service Provider.

FACILITY LOCATION:

The Service Provider shall provide detention services for detainees at the following institution(s):

SENECA COUNTY JAIL
3040 South State Route 100
Tiffin, OH 44883

Article I. Purpose

- A. Purpose: The purpose of this Intergovernmental Service Agreement (IGSA) is to establish an Agreement between ICE and the Service Provider for the detention, and care of persons detained under the authority of the Immigration and Nationality Act, as amended. All persons in the custody of ICE are "Administrative Detainees". This term recognizes that ICE detainees are not charged with criminal violations and are only held in custody to assure their presence throughout the administrative hearing process and to assure their presence for removal from the United States pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals or other Federal judicial body.
- B. Responsibilities: This Agreement sets forth the responsibilities of ICE and the Service Provider. The Agreement states the services the Service Provider shall perform satisfactorily to receive payment from ICE at the rate prescribed in Article I, C.
- C. Guidance: This is a fixed rate agreement, not a cost reimbursable agreement, with respect to the detainee day rate. The detainee day rate is \$58.00. ICE shall be responsible for reviewing and approving the costs associated with this Agreement and subsequent modifications utilizing all applicable federal procurement laws, regulations and standards in arriving at the detainee day rate.

Article II. General

- A. Funding: The obligation of ICE to make payments to the Service Provider is contingent upon the availability of Federal funds. ICE will neither present detainees to the Service Provider nor direct performance of any other services until ICE has the appropriate funding. Orders will be placed

under this Agreement when specific requirements have been identified and funding obtained. Performance under this Agreement is not authorized until the Contracting Officer issues an order, in writing. The effective date of the Agreement will be negotiated and specified in a delivery order to this Agreement that is supported by the ICE Contracting Officer. This Agreement is neither binding nor effective unless signed by the ICE Contracting Officer. Payments at the approved rate will be paid upon the return of the signed Agreement by the authorized Local Government official to ICE.

- B. Subcontractors: The Service Provider shall notify and obtain approval from the ICE Contracting Officer's Technical Representative (COTR) or designated ICE official if it intends to house ICE detainees in a facility other than the SENECA COUNTY JAIL. If either that facility, or any future facility is operated by an entity other than the Service Provider, ICE shall treat the entity as a subcontractor to the Service Provider. The Service Provider shall obtain the Contracting Officer's approval before subcontracting the detention and care of detainees to another entity. The Contracting Officer has the right to deny, withhold, or withdraw approval of the proposed subcontractor. Upon approval by the Contracting Officer, the Service Provider shall ensure that any subcontract includes all provisions of this Agreement, and shall provide ICE with copies of all subcontracts. All payments will be made to the Service Provider. ICE will not accept invoices from, or make payments to a subcontractor.
- C. Consistent with Law: This is a firm fixed rate agreement, not cost reimbursable agreement. This Agreement is permitted under applicable statutes, regulation, policies or judicial mandates. Any provision of this Agreement contrary to applicable statutes, regulation, policies or judicial mandates is null and void and shall not necessarily affect the balance of the Agreement.

Article III. Covered Services

- A. Bedspace: The Service Provider shall provide male/female beds on a space available basis. The Service Provider shall house all detainees as determined within the Service Provider's classification system. ICE will be financially liable only for the actual detainee days as defined in Paragraph C of Article III.
- B. Basic Needs: The Service Provider shall provide ICE detainees with safekeeping, housing, subsistence, medical and other services in accordance with this Agreement. In providing these services, the Service Provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies and procedures. If the Service Provider determines that ICE has delivered a person for custody who is under the age of eighteen (18), the Service Provider shall not house that person with adult detainees and shall immediately notify the ICE COTR or designated ICE official. The types and levels of services shall be consistent with those the Service Provider routinely affords other inmates.
- C. Unit of Service and Financial Liability: The unit of service is called a "detainee day" and is defined as one person per day. The detainee day begins on the date of arrival. The Service Provider may bill ICE for the date of arrival but not the date of departure. The Service Provider shall not charge for costs that are not directly related to the housing and detention of detainees. Such costs include but are not limited to:

- 1) Salaries of elected officials

- 2) Salaries of employees not directly engaged in the housing and detention of detainees
 - 3) Indirect costs in which a percentage of all local government costs are pro-rated and applied to individual departments unless, those cost are allocated under an approved Cost Allocation Plan
 - 4) Detainee services which are not provided to, or cannot be used by, Federal detainees
 - 5) Operating costs of facilities not utilized by Federal detainees
 - 6) Interest on borrowing (however represented), bond discounts, costs of financing/refinancing, except as prescribed by OMB Circular A-87.
 - 7) Legal or professional fees (specifically legal expenses for prosecution of claims against the Federal Government, legal expenses of individual detainees or inmates)
 - 8) Contingencies
- D. Interpretive Services: The Service Provider shall make special provisions for non-English speaking, handicapped or illiterate detainees. ICE will reimburse the Service Provider for the actual costs associated with providing commercial written or telephone language interpretive services. Upon request, ICE will assist the Service Provider in obtaining translation services. The Service Provider shall provide all instructions verbally either in English or the detainees' language, as appropriate, to detainees who cannot read. The Service Provider shall include the actual costs that the Service Provider paid for such services on its monthly invoice. Except in emergency situations, the Service Provider shall not use detainees for translation services. If the Service Provider uses a detainee for translation service, it shall notify ICE within twenty-four (24) hours of the translation service.
- E. Escort and Transportation Services: The Service Provider will provide, upon request and as scheduled by ICE, necessary escort and transportation services for ICE detainees to and from designated locations. Escort services will be required for escorting detainees to court hearings; escorting witnesses to the courtroom and staged with the ICE Judge during administrative proceedings. Transportation Services shall be performed by at least two (2) qualified sworn law enforcement or correctional officer personnel employed by the Service Provider under their policies, procedures and authorities. See Article XVII.

Article IV. Receiving and Discharging Detainees

- A. Required Activity: The Service Provider shall receive and discharge detainees only to and from properly identified ICE personnel or other properly identified Federal law enforcement officials with prior authorization from DHS/ICE. Presentation of U.S. Government identification shall constitute "proper identification." The Service Provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days per week. ICE shall furnish the Service Provider with reasonable notice of receiving and discharging detainees. The Service Provider shall ensure positive identification and recording of detainees and ICE officers. The Service Provider shall not permit medical or emergency discharges except through coordination with on-duty ICE officers.
- B. Emergency Situations: ICE detainees shall not be released from the facility into the custody of other Federal, state, or local officials for any reason, except for medical or emergency situations, without express authorization of ICE.

- C. Restricted Release of Detainees: The Service Provider shall not release ICE detainees from its physical custody to any persons other than those described in Paragraph A of Article IV for any reason, except for either medical, other emergency situations, or in response to a federal writ of habeas corpus. If an ICE detainee is sought for federal, state, or local proceedings, only ICE may authorize release of the detainee for such purposes. The Service Provider shall contact the ICE COTR or designated ICE official immediately regarding any such requests.
- D. Service Provider Right of Refusal: The Service Provider retains the right to refuse acceptance, or request removal, of any detainee exhibiting violent or disruptive behavior, or of any detainee found to have a medical condition that requires medical care beyond the scope of the Service Provider's health care provider. In the case of a detainee already in custody, the Service Provider shall notify ICE and request such removal of the detainee from the facility. The Service Provider shall allow ICE reasonable time to make alternative arrangements for the detainee.
- E. Emergency Evacuation: In the event of an emergency requiring evacuation of the facility, the Service Provider shall evacuate ICE detainees in the same manner, and with the same safeguards, as it employs for persons detained under the Service Provider's authority. The Service Provider shall notify the ICE COTR or designated ICE official within two (2) hours of evacuation.

Article V. DHS/ICE Detention Standards

SATISFACTORY PERFORMANCE:

The Service Provider is required to house detainees and perform related detention services in accordance with the most current edition of ICE National Detention Standards (<http://www.ice.gov/partners/dro/opsmanual/index.htm>). ICE Inspectors will conduct periodic inspections of the facility to assure compliance with the ICE National Detention Standards.

Article VI. Medical Services

- A. Auspices of Health Authority: The Service Provider shall provide ICE detainees with on-site health care services under the control of a local government designated Health Authority. The Service Provider shall ensure equipment, supplies, and materials, as required by the Health Authority, are furnished to deliver health care on-site.
- B. Level of Professionalism: The Service Provider shall ensure that all health care service providers utilized for ICE detainees hold current licenses, certifications, and/or registrations with the State and/or City where they are practicing. The Service Provider shall retain a licensed practical nurse to provide health care and sick call coverage unless expressly stated otherwise in this Agreement. In the absence of a health care professional, non-health care personnel may refer detainees to health care resources based upon protocols developed by United States Public Health Service (USPHS) Division of Immigration Health Services (DIHS).
- C. Access to Health Care: The Service Provider shall ensure that on-site medical and health care coverage as defined below is available for all ICE detainees at the facility for at least eight (8) hours per day, seven (7) days per week. The Service Provider shall ensure that its employees solicit each detainee for health complaints and deliver the complaints in writing to the medical and health care

staff. The Service Provider shall furnish the detainees instructions in his or her native language for gaining access to health care services as prescribed in Article III, Paragraph D.

- D. On-Site Health Care: The Service Provider shall furnish on-site health care under this Agreement. The Service Provider shall not charge any ICE detainee an additional fee or Co-payment for medical services or treatment provided at the Service Provider's facility. The Service Provider shall ensure that ICE detainees receive no lower level of on-site medical care and services than those it provides to local inmates. On-site health care services shall include arrival screening within twenty-four (24) hours of arrival at the facility, sick call coverage, provision of over-the-counter medications, treatment of minor injuries (e.g. lacerations, sprains, and contusions), treatment of special needs and mental health assessments. Detainees with chronic conditions shall receive prescribed treatment and follow-up care.
- E. Arrival Screening: Arrival screening shall include at a minimum TB symptom screening, planting of the Tuberculin Skin Test (PPD), and recording the history of past and present illnesses (mental and physical). The health care service provider or trained health care personnel may perform the arrival screening.
- F. Acceptance of Detainees with Extreme Health Conditions: If the Service Provider determines that an ICE detainee has a medical condition which renders that person unacceptable for detention under this Agreement, (for example, contagious disease, condition needing life support, uncontrollable violence), the Service Provider shall notify the ICE COTR or the designated ICE official. Upon such notification the Service Provider shall allow ICE reasonable time to make the proper arrangements for further disposition of that detainee.
- G. DIHS Pre-Approval for Non-Emergency Off-Site Care: The Service Provider shall obtain DIHS approval for any non-emergency, off-site healthcare for any detainee. DIHS acts as the agent and final health authority for ICE on all off-site detainee medical and health related matters. The relationship of the DIHS to the detainee equals that of physician to patient. The Service Provider shall release any and all medical information for ICE detainees to the DIHS representatives upon request. The Service Provider shall solicit DIHS approval before proceeding with non-emergency, off-site medical care (e.g. off site lab testing, eyeglasses, cosmetic dental prosthetics, and dental care for cosmetic purposes). The Service Provider shall submit supporting documentation for non-routine, off-site medical health services to DIHS. For medical care provided outside the facility, DIHS may determine that an alternative medical provider or institution is more cost-effective or more aptly meets the needs of ICE and the detainee. ICE may refuse to reimburse the Service Provider for non-emergency medical costs incurred that were not pre-approved by the DIHS. The Service Provider shall send all requests for pre-approval for non-emergent off-site care to:

Phone: (888) 718-8947

FAX: (866) 475-9349

Via website: www.inshealth.org

The Service Provider is to notify all medical providers approved to furnish off-site health care of detainees to submit their bills in accordance with instructions provided to:

United States Public Health Services
Division of Immigration Health Services

1220 L Street, NW PMB 468
Washington, DC 20005-4018
(Phone): (888)-718-8947
(FAX): (866)-475-9349
Via website: www.inshealth.org

- H. Emergency Medical Care: The Service Provider shall furnish twenty-four (24) hour emergency medical care and emergency evacuation procedures. In an emergency, the Service Provider shall obtain the medical treatment required to preserve the detainee's health. The Service Provider shall have access to an off-site emergency medical provider at all times. The Health Authority of the Service Provider shall notify the DIHS Managed Care Coordinator by calling the telephone number listed in paragraph G above as soon as possible, and in no case more than seventy-two (72) hours after detainee receipt of such care. The Health Authority will obtain pre-authorization from the DIHS Managed Care Coordinator for service(s) beyond the initial emergency situation.
- I. Off-Site Guards: The Service Provider shall provide guards at all times detainees are admitted to an outside medical facility.
- J. DIHS Visits: The Service Provider shall allow DIHS Managed Care Coordinators reasonable access to its facility for the purpose of liaison activities with the Health Authority and associated Service Provider departments.

Article VII. No Employment of Unauthorized Aliens

Subject to existing laws, regulations, Executive Orders, and addenda to this Agreement, the Service Provider shall not employ aliens unauthorized to work in the United States. Except for maintaining personal living areas, ICE detainees shall not be required to perform manual labor.

Article VIII. Employment Screening Requirements

- A. General. The Service Provider shall certify to the U.S. Immigration and Customs Enforcement, Contracting Officer that any employees performing under this Agreement, who have access to ICE detainees, will have successfully completed an employment screening that includes at a minimum a criminal history records check, employment reference checks and a citizenship check.
- B. Employment Eligibility. Screening criteria that will exclude applicants from consideration to perform under this agreement includes:
 - 1. Felony convictions
 - 2. Conviction of a sex crime
 - 3. Offense/s involving a child victim
 - 4. Felony drug convictions
 - 5. Pattern of arrests, without convictions, that brings into question a person's judgment and reliability to promote the efficiency and integrity of the ICE mission.
 - 6. Intentional falsification and/or omission of pertinent personal information to influence a favorable employment decision.

Subject to existing law, regulations and/or other provisions of this Agreement, illegal or undocumented aliens shall not be employed by the Service Provider.

The Service Provider shall certify that each employee working on this Agreement will have a Social Security Card issued and approved by the Social Security Administration. The Service Provider shall be responsible to the Government for acts and omissions of his own employees and for any Subcontractor(s) and their employees.

The Service Provider shall expressly incorporate this provision into any and all Subcontracts or subordinate agreements issued in support of this Agreement.

The Service Provider shall recertify their employees every three years by conducting a criminal history records check to maintain the integrity of the workforce.

The Service Provider shall implement a Self-Reporting requirement for its employees to immediately report one's own criminal arrest/s to superiors.

- C. Security Management. The Service Provider shall appoint a senior official to act as the Agreement Security Officer. The individual will interface with the COTR on all security matters, to include physical, personnel, and protection of all Government information and data accessed by the Service Provider.

The COTR and Contracting Officer shall have the right to inspect the procedures, methods, all documentation and facilities utilized by the Service Provider in complying with the security requirements under this Agreement. Should ICE determine that the Service Provider is not complying with the security requirements of this Agreement, the Service Provider shall be informed in writing by the Contracting Officer of the proper action to be taken in order to effect compliance with these employment screening requirements.

Article IX. Period of Performance

- A. This Agreement shall become effective upon the date of final signature by the ICE Contracting Officer and the authorized signatory of the Service Provider and will remain in effect indefinitely unless terminated in writing by either party. Either party must provide written notice of intention to terminate the agreement, 60 days in advance of the effective date of formal termination, or the Parties may agree to a shorter period under the procedures prescribed in Article XI.
- B. Basis for Price Adjustment: A firm fixed price with economic adjustment provides for upward and downward revision of the stated Per Diem based upon cost indexes of labor and operating expenses, or based upon the Service Provider's actual cost experience in providing the service.

Article X. Inspection

- A. Jail Agreement Inspection Report: The Jail Agreement Inspection Report stipulates minimum requirements for fire/safety code compliance, supervision, segregation, sleeping utensils, meals, medical care, confidential communication, telephone access, legal counsel, legal library, visitation, and recreation. The Service Provider shall allow ICE to conduct inspections of the facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as

determined by ICE. No notice to the Service Provider is required prior to an inspection. ICE will conduct such inspections in accordance with the Jail Agreement Inspection Report. ICE will share findings of the inspection with the Service Provider's facility administrator. The Inspection Report will state any improvements to facility operation, conditions of confinement, and level of service that will be required by the Service Provider.

- B. Possible Termination: If the Service Provider fails to remedy deficient service identified through an ICE inspection, ICE may terminate this Agreement without regard to the provisions of Articles IX and XI.
- C. Share Findings: The Service Provider shall provide ICE copies of facility inspections, reviews, examinations, and surveys performed by accreditation sources.
- D. Access to Detainee Records: The Service Provider shall, upon request, grant ICE access to any record in its possession, regardless of whether the Service Provider created the record, concerning any detainee held pursuant to this Agreement. This right of access shall include, but is not limited to, incident reports, records relating to suicide attempts, and behavioral assessments and other records relating to the detainee's behavior while in the Service Provider's custody. Furthermore, the Service Provider shall retain all records where this right of access applies for a period of two (2) years from the date of the detainee's discharge from the Service Provider's custody.

Article XI. Modifications and Disputes

- A. Modifications: Actions other than those designated in this Agreement will not bind or incur liability on behalf of either Party. Either Party may request a modification to this Agreement by submitting a written request to the other Party. A modification will become a part of this Agreement only after the ICE Contracting Officer and the authorized signatory of the Service Provider have approved the modification in writing.
- B. Disputes: The ICE Contracting Officer and the authorized signatory of the Service Provider will settle disputes, questions and concerns arising from this Agreement. Settlement of disputes shall be memorialized in a written modification between the ICE Contracting Officer and authorized signatory of the Service Provider. In the event a dispute is not able to be resolved between the Service Provider and the ICE Contracting Officer, the ICE Contracting Officer will make the final decision. If the Service Provider does not agree with the final decision, the matter may be appealed to the ICE Head of the Contracting Activity (HCA) for resolution. The ICE HCA may employ all methods available to resolve the dispute including alternative dispute resolution techniques. The Service Provider shall proceed diligently with performance of this Agreement pending final resolution of any dispute.

Article XII. Adjusting the Detainee Day Rate

ICE shall reimburse the Service Provider at the fixed detainee day rate shown on the cover page of the document, Article I. (C). The Parties may adjust the rate twenty-four (24) months after the effective date of the agreement and every twelve (12) months thereafter. The Parties shall base the cost portion of the rate adjustment on the principles of allowability and allocability as set forth in OMB Circular A-87, federal procurement laws, regulations, and standards in arriving at the detainee day rate. The request for adjustment shall be submitted on an ICE Jail Services Cost Statement. If ICE does not

receive an official request for a detainee day rate adjustment that is supported by an ICE Jail Services Cost Statement, the fixed detainee day rate as stated in this Agreement will be in place indefinitely. See Article XI A.

ICE reserves the right to audit the actual and/or prospective costs upon which the rate adjustment is based. All rate adjustments are prospective. As this is a fixed rate agreement, there are no retroactive adjustment(s).

Article XIII. Enrollment, Invoicing, and Payment

- A. Enrollment in Electronic Funds Transfer: The Service Provider shall provide ICE with the information needed to make payments by electronic funds transfer (EFT). Since January 1, 1999, ICE makes all payments only by EFT. The Service Provider shall identify their financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor Miscellaneous Payment Enrollment Form. The Service Provider shall submit a completed SF 3881 to ICE payment office prior to submitting its initial request for payment under this Agreement. If the EFT data changes, the Service Provider shall be responsible for providing updated information to the ICE payment office.
- B. Invoicing: The Service Provider shall submit an original itemized invoice containing the following information: the name and address of the facility; the name of each ICE detainee; detainee's A-number; specific dates of detention for each detainee; the total number of detainee days; the daily rate; the total detainee days multiplied by the daily rate; an itemized listing of all other charges; and the name, title, address, and phone number of the local official responsible for invoice preparation. The Service Provider shall submit monthly invoices within the first ten (10) working days of the month following the calendar month when it provided the services, to:

These addresses listed below will be used based on whether the detainees are being held by either the Cleveland or Columbus sub offices.

Department of Homeland Security
ATTN: Immigration and Customs Enforcement
Deportation Unit
1240 East 9th Street
Suite 535
Cleveland, OH 44199

Department of Homeland Security
ATTN: Immigration and Customs Enforcement
Deportation Unit
50 West Broad Street
Suite 306D
Columbus, OH 43215

- C. Payment: ICE will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the United States, or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this Agreement. The Prompt Payment Act requires ICE to make payments under this Agreement the thirtieth (30th) calendar day after the ICE Deportation office

receives a complete invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, shall constitute the payment date. The Prompt Payment Act requires ICE to pay interest on overdue payments to the Service Provider. ICE will determine any interest due in accordance with the Prompt Payment Act.

Article XIV. Government Furnished Property

- A. Federal Property Furnished to the Service Provider: ICE may furnish Federal Government property and equipment to the Service Provider. Accountable property remains titled to ICE and shall be returned to the custody of ICE upon termination of the Agreement. The suspension of use of bed space made available to ICE is agreed to be grounds for the recall and return of any or all government furnished property.
- B. Service Provider Responsibility: The Service Provider shall not remove ICE property from the facility without the prior written approval of ICE. The Service Provider shall report any loss or destruction of any Federal Government property immediately to ICE.

Article XV. Hold Harmless and Indemnification Provisions

- A. Service Provider Held Harmless: ICE shall, subject to the availability of funds, save and hold the Service Provider harmless and indemnify the Service Provider against any and all liability claims and costs of whatever kind and nature, for injury to or death of any person(s), or loss or damage to any property, which occurs in connection with or is incident to performance of work under the terms of this Agreement, and which results from negligent acts or omissions of ICE officers or employees, to the extent that ICE would be liable for such negligent acts or omissions under the Federal Tort Claims Act, 28 USC 2691 *et seq.*
- B. Federal Government Held Harmless: The Service Provider shall save and hold harmless and indemnify federal government agencies to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the tenets of this Agreement, resulting from the negligent acts or omissions of the Service Provider, or any employee, or agent of the Service Provider. In so agreeing, the Service Provider does not waive any defenses, immunities or limits of liability available to it under state or federal law.
- C. Defense of Suit: In the event a detainee files suit against the Service Provider contesting the legality of the detainee's incarceration and/or immigration/citizenship status, ICE shall request that the U.S. Attorney's Office, as appropriate, move either to have the Service Provider dismissed from such suit, to have ICE substituted as the proper party defendant; or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, ICE shall request that the U.S. Attorney's Office be responsible for the defense of any suit on these grounds.
- D. ICE Recovery Right: The Service Provider shall do nothing to prejudice ICE's right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request of the Contracting Officer, the Service Provider shall, at ICE's expense, furnish to ICE all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments of assignment in favor of ICE in obtaining recovery.

Article XVI. Financial Records

- A. Retention of Records: All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this Agreement shall be retained by the Service Provider for three (3) years for purposes of federal examinations and audit. The three (3) year retention period begins at the end of the first year of completion of service under the Agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three (3) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later.
- B. Access to Records: ICE and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Service Provider or its sub-contractors, which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.
- C. Delinquent Debt Collection: ICE will hold the Service Provider accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the Federal Government. ICE shall apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal Government by the Service Provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

Article XVII. Guard/Transportation Services

- A. Transport Services Rate: The Service Provider agrees, upon request of the Federal Government in whose custody a prisoner is held, to provide all such air/ground transportation services as may be required to transport detainees securely, in a timely manner, to locations as directed by the ICE Contracting Officer's Technical Representative (COTR) or designated ICE official. At least two (2) qualified law enforcement or correctional officer personnel employed by the Service Provider under their policies, procedures and practices will perform services. These officers must be appropriately licensed and certified for those duties pursuant to the transportation regulations of the State of Ohio and the U.S. Department of Transportation. **Transport for emergency services only is included in the daily per diem rate.** All other transportation services will be reimbursed at the rate of \$20.00 per hour for one (1) officer and the overtime rate will be \$29.00 per hour for one (1) officer. Overtime charges do not apply until after the total number of hours worked per officer exceeds eight (8) hours in a workday. The related transportation mileage shall be reimbursed at the mileage rate established pursuant to the current General Services Administration (GSA)/federal travel allowance rates.
- B. Medical Transportation: Transportation and/or escort/stationary guard services for ICE detainees housed at the Service Provider's facility to and from a medical facility for outpatient care, and transportation and/or escort guard services for ICE detainees housed at the Service Provider's facility admitted to a medical facility; and to detainees attending off-site court proceedings. An officer or officers, shall keep the detainee under constant supervision twenty-four (24) hours per day until the detainee is ordered released from the hospital, or at the order of the COTR. The Service Providers agrees to augment such practices as may be requested by ICE to enhance specific requirements for security, detainee monitoring, visitation and contraband control.

- C. Indemnities: Furthermore, the Service Provider agrees to hold harmless and indemnify DHS/ICE and its officials in their official and individual capacities from any liability, including third-party liability or worker's compensation, arising from the conduct of the Service Provider and its employees during the course of transporting ICE detainees.
- D. Personal Vehicles: The Service Provider shall not allow employees to use their personal vehicles to transport detainees. The Service Provider shall furnish vehicles equipped with interior security features including physical separation of detainees from guards. The Service Provider shall provide interior security specifications of the vehicles to ICE for review and approval prior to installation.
- E. Training and Compliance: The Service Provider shall comply with ICE transportation standards (<http://www.ice.gov/partners/dro/opsmanual/index.htm>) related to the number of hours the Provider's employee may operate a vehicle. The transportation shall be accomplished in the most economical manner. The Service Provider personnel provided for the above services shall be of the same qualifications, receive training, complete the same security clearances, and wear the same uniforms as those personnel provided for in other areas of this agreement.
- F. Same Sex Transport: During all transportation activities, at least one (1) officer shall be the same sex as the detainee. Questions concerning guard assignments shall be directed to the COTR for final determination.
- G. Miscellaneous Transportation: The COTR may direct the Service Provider to transport detainees to unspecified, miscellaneous locations.
- H. Billing Procedures: The itemized monthly invoice for such stationary guard services shall state the number of hours being billed, the duration of the billing (times and dates) and the name of the detainee(s) that was guarded.

Article XVIII. Contracting Officer's Technical Representative

The Contracting Officer's Technical Representative (COTR) will be appointed by the Contracting Officer. When and if the COTR duties are reassigned, an administrative modification will be issued to reflect the changes. This designation does not include authority to sign contractual documents or to otherwise commit to, or issue changes, which could affect the price, quantity, or performance of this Agreement.

09/28/2007 FRI 15:40 FAX

014/014

IN WITNESS WHEREOF, the undersigned, duly authorized officers, have subscribed their names on behalf of the SENECA COUNTY JAIL and Department of Homeland Security, U.S. Immigration and Customs Enforcement.

ACCEPTED:

U.S. Immigration and Customs Enforcement
Susan Erickson
Contracting Officer

ACCEPTED:

SENECA COUNTY JAIL
Thomas G. Steyer
Sheriff

By: Susan D. Erickson By: Thomas G. Steyer
Date: 9/28/07 Date: 9-28-07

The Intergovernmental Service Agreement Number is IGSA #DROIGSA-07-0035

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE OF PAGES

1

2

2. AMENDMENT/MODIFICATION NO.

P00010

3. EFFECTIVE DATE

See Block 16C

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (If applicable)

6. ISSUED BY

CODE

70CDCR

7. ADMINISTERED BY (If other than Item 6)

CODE

ICE/DCR

DETENTION COMPLIANCE AND REMOVALS
U.S. Immigration and Customs Enforcement
Office of Acquisition Management
801 I ST NW, RM 900
WASHINGTON DC 20536

ICE/Detention Compliance & Removals
Immigration and Customs Enforcement
Office of Acquisition Management
801 I Street NW, suite 930
Washington DC 20536

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

SENECA COUNTY OF
111 MADISON ST
TIFFIN OH 448832824

(x)

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

x

10A. MODIFICATION OF CONTRACT/ORDER NO.
DROIGSA-07-0035/

10B. DATED (SEE ITEM 13)

11/28/2007

CODE 0206477230000

FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended. ☐ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) Other Administrative Action

E. IMPORTANT: Contractor ☐ is not. ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

DUNS Number: 020647723

Contracting Officer's Representative (COR):

Alan Moore, 313-446-3478

Alan.G.Moore@ice.dhs.gov

Alternate Contracting Officer's Representative (ACOR):

Bonnie Bieth, 313-446-3318

Bonnie.Bieth@ice.dhs.gov

Contracting Officer (CO):

Natalie Carr, (202) 924-3631

Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

NATALIE CARR

TEL: 202-924-3631

EMAIL: Natalie.Carr@ice.dhs.gov

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

(Signature of person authorized to sign)

(Signature of Contracting Officer)

NSN 7540-01-152-8070

Previous edition unusable

STANDARD FORM 30 (REV. 10-83)

Prescribed by GSA

FAR (48 CFR) 53.243

Exhibit B

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

DROIGSA-07-0035//P00010

PAGE 2 OF 2

2

2

NAME OF OFFEROR OR CONTRACTOR

SENECA COUNTY OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>Natalie.Carr@ice.dhs.gov</p> <p>Contract Specialist (CS): Andrew Hadden, (202) 494-5943 Andrew.Hadden@ice.dhs.gov</p> <p>---</p> <p>The purpose of this modification is to incorporate Attachment 1 - Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.</p> <p>All other terms and conditions of IGSA No. DROIGSA-07-0035 remain unchanged.</p> <p>Period of Performance: 09/28/2007 to 09/27/2037</p>				

**Attachment 1 -Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.
(OCT 2021) (DEVIATION)**

**Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal
Contractors**

**Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.
(OCT 2021) (DEVIATION)**

(a) *Definition.* As used in this clause -

United States or its outlying areas means—

- (1) The fifty States;
- (2) The District of Columbia;
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF KENTUCKY

COMMONWEALTH OF KEN-
TUCKY, et al.

Plaintiffs,

v.

JOSEPH R. BIDEN, et al.,

Defendants.

Civil Action No. 3:21-cv-00055-
GFVT

DECLARATION OF SCOTT A. HILDENBRAND

I, Scott A. Hildenbrand, make the following Declaration pursuant to 28 U.S.C. §1746, and state that under the penalty of perjury the following is true and correct to the best of my knowledge and belief.

1. I am the Sheriff of Geauga County.
2. My office has entered into a contract with the United States Department of Homeland Security to provide housing for Immigrations and Customs Enforcement detainees.
3. A copy of the contract is attached.

I have read the following, and it is all true and correct.

11-05-2021
Dated



Scott A. Hildenbrand
Gauga County Sheriff



GEAUGA COUNTY BOARD OF COMMISSIONERS

Tracy A. Jemison Mary E. Samide William S. Young

470 Center Street • Building 4 • Chardon, Ohio 44024-1071

November 24, 2009

Sheriff Dan McClelland
Gauga County Sheriff
13281 Ravenna Road
Chardon, OH 44024

Dear Sheriff McClelland:

Please be advised that during session on November 24, 2009, the Board of County Commissioners took the following action:

Motion: by Commissioner Jemison, seconded by Commissioner Samide to approve and authorize the Vice President of the Board to execute the Intergovernmental Agreement (IGA) between the Geauga County Board of Commissioners, United States Marshals Service Prisoner Operations Division and the Geauga County Sheriff's Office for the housing, safekeeping and subsistence of federal prisoners.

Roll Call Vote:	Commissioner Jemison	Aye
	Commissioner Samide	Aye
	Commissioner Young	Absent

Very truly yours,

Claudine Kozenko
Commissioners' Clerk



U.S. Department of Justice

United States Marshals Service

Prisoner Operations Division

Washington, DC 20530-1000

October 9, 2009

MEMORANDUM TO: Angel Gonzalez
Chief Deputy United States Marshal
Northern District of Ohio

FROM: Heather Lowry, Assistant Chief
Detention Operations - East
Prisoner Operations Division

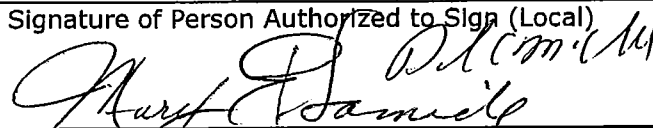
SUBJECT: Geauga County Sheriff's Office

The above mentioned Intergovernmental Agreement (IGA) is attached. Please forward it to the local government for review and signature. After the local government representative has signed the IGA, return it to the Prisoner Operations Division (POD) Grants Specialist for signature and final processing. Please be aware that the IGA will not be fully executed until signed by the responsible Prisoner Operations Grants Specialist. **The signed copy of the IGA must be returned to headquarters by November 15, 2009.**

After final processing, a copy of the executed IGA will be forwarded to the district and local government. A copy should also be sent to the appropriate Bureau of Prisons (BOP) Community Corrections Manager and Immigration and Customs Enforcement (ICE) regional office, if included in the IGA. Please make sure that the Administrative Officer and Criminal Clerk have a copy of the executed documents so that they are aware of the current jail day rate and any special terms and conditions (i.e. guard/transportation services, mileage, etc.).

If you have questions, please contact Renita L. Barbee, Senior Grants Specialist at (202) 616-0559.

Cc: Geauga County Sheriff's Office

1. Agreement Number 60-97-0010	2. Effective Date See Block 19.	3. Facility Code(s) 5AY	4. DUNS Number 040288008
5. Issuing Federal Agency United States Marshals Service Prisoner Operations Division Detention Management - East Washington, DC 20530-1000		6. Local Government Geauga County Sheriffs Office 12450 Merritt Rd. Chardon, OH 44024 Tax ID#: 34-6001208	
7. Appropriation Data 15X1020		8. Local Contact Person Kathy Rose 9. Tel: 4402792075 Fax: 4402791689 Email: krose@co.geauga.oh.us	
10. This agreement is for the housing, safekeeping, and subsistence of federal prisoners, in accordance with content set forth herein.		11. Male: 75 Female: 25 (Estimated Federal Beds)	12. \$70.00
13. Optional Guard/Transportation Services: <input checked="" type="checkbox"/> Medical Services <input checked="" type="checkbox"/> U.S. Courthouse		14. Guard Hour Rate: \$30.00 Mileage shall be reimbursed by the Federal Government at the GSA Federal Travel Regulation Mileage Rate.	
15. Local Government Certification <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct, this document has been duly authorized by the governing of the Department or Agency and the Department or Agency will comply with all provisions set forth herein.</i>		16. Signature of Person Authorized to Sign (Local)  Signature <i>DANIEL C MILLERLAND</i> <i>MARY E. SAMIDE</i> Name <i>SHERIFF</i> <i>VP Commissioner 11/8/20</i> Title Date	
17. Prisoner and Detainee Type Authorized <input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female <input type="checkbox"/> ICE Detainees	18. Other Authorized Agency User <input checked="" type="checkbox"/> BOP <input type="checkbox"/> ICE	19. Signature of Person Authorized to Sign (Federal) Signature Renita L. Barbee Name Senior Grants Specialist Title Date	

Agreement Number 60-97-0010

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Agreement Number 60-97-0010

Authority

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Acts of 2001 (Public Law 106-553), this Agreement is entered into between the United States Marshals Service (hereinafter referred to as the "Federal Government") and the **Geauga County Sheriffs Office** (hereinafter referred to as "Local Government"), who hereby agree as follows:

Purpose of Agreement and Security Provided

The Federal Government and the Local Government establish this Agreement that allows the United States Marshals Service (USMS) to house federal detainees with the Local Government at the **Geauga County Sheriffs Office 12450 Merritt Rd. Chardon, OH 44024** (hereinafter referred to as "the facility").

The population, hereinafter referred to as "federal detainees," will include individuals charged with federal offenses and detained while awaiting trial, individuals who have been sentenced and are awaiting designation and transport to a BOP facility, and individuals who are awaiting a hearing on their immigration status or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of federal detainees in accordance with all state and local laws, standards, regulations, policies and court orders applicable to the operation of the facility. Detainees shall also be housed in a manner that is consistent with federal law and the Federal Performance-based Detention Standards.

The USMS ensures the secure custody, care, and safekeeping of USMS detainees. Accordingly, all housing or work assignments, and recreation or other activities for USMS detainees are permitted only within secure areas of the building or within the secure external recreational/exercise areas.

At all times, the Federal Government shall have access to the facility and to the federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period going back 3 years from the date of request by the Federal Government.

Period of Performance

This Agreement is effective upon the date of signature of both parties, and remains in effect unless terminated by either party with written notice. The Local Government shall provide no less than 120 calendar

Agreement Number 60-97-0010

days notice of their intent to terminate. Where the Local Government has received a Cooperative Agreement Program (CAP) award, the termination provisions of the CAP prevail.

Assignment and Outsourcing of Jail Operations

Overall management and operation of the facility housing federal detainees may not be contracted out without the prior express written consent of the Federal Government.

Medical Services

The Local Government shall provide federal detainees with the full range of medical care inside the detention facility. The level of care inside the facility should be the same as that provided to state and local detainees. The Local Government is financially responsible for all medical care provided inside the facility to federal detainees. This includes the cost of all medical, dental, and mental health care as well as the cost of medical supplies, over the counter prescriptions and, any prescription medications routinely stocked by the facility which are provided to federal detainees. The cost of all of the above referenced medical care is covered by the federal per diem rate. However, if dialysis is provided within the facility, the Federal Government will pay for the cost of that service.

The Federal Government is financially responsible for all medical care provided outside the facility to federal detainees. The Federal Government must be billed directly by the medical care provider not the Local Government. In order to ensure that Medicare rates are properly applied, medical claims for federal detainees must be on Centers for Medicare and Medicaid (CMS) Forms in order to be re-priced at Medicare rates in accordance with Title 18, USC Section 4006. The Local Government is required to immediately forward all medical claims for federal detainees to the Federal Government for processing.

All outside medical care provided to federal detainees must be pre-approved by the Federal Government. In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the federal detainee's illness or injury as well as the types of treatment provided.

Agreement Number 60-97-0010

Medical care for federal detainees shall be provided by the Local Government in accordance with the provisions of USMS, Publication 100-Prisoner Health Care Standards (www.usmarshals.gov/prisoner/standards.htm) and in compliance with USMS Inspection Guidelines, USM 218 Detention Facility Investigative Report. The Local Government is responsible for all associated medical record keeping.

The facility shall have in place an adequate infectious disease control program which includes testing of all federal detainees for Tuberculosis (TB) as soon as possible after intake (not to exceed 14 days). When Purified Protein Derivative (PPD) skin tests are utilized, they shall be read between 48 and 72 hours after placement.

TB testing shall be accomplished in accordance with the latest Centers for Disease Control (CDC) Guidelines and the result promptly documented in the federal detainee's medical record. Special requests for expedited TB testing and clearance (to include time sensitive moves) will be accomplished through advance coordination by the Federal Government and Local Government.

The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB or any other highly communicable disease such as Severe Acute Respiratory Syndrome (SARS), Avian Flu, Methicillin-resistant Staphylococcus Aureus (MRSA), Chicken Pox, etc., which might affect scheduled transports or productions so that protective measures can be taken by the Federal Government.

When a federal detainee is being transferred and/or released from the facility, they will be provided with seven days of prescription medication which will be dispensed from the facility. When possible, generic medications should be prescribed. Medical records must travel with the federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a federal detainee is moved.

Federal detainees may be charged a medical co-payment by the Local Government in accordance with the provisions of Title 18, USC Section 4013(d). The Federal Government is not responsible for medical co-payments and cannot be billed for these costs even for indigent federal prisoners.

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Receiving and Discharge of Federal Detainees

The Local Government agrees to accept federal detainees only upon presentation by a law enforcement officer of the Federal Government with proper agency credentials.

The Local Government shall not relocate a federal detainee from one facility under its control to another facility not described in this Agreement without permission of the Federal Government.

The Local Government agrees to release federal detainees only to law enforcement officers of the Federal Government agency initially committing the federal detainee (i.e., Drug Enforcement Administration, Bureau of Immigration and Customs Enforcement, etc.) or to a Deputy United States Marshal (DUSM). Those federal detainees who are remanded to custody by a DUSM may only be released to a DUSM or an agent specified by the DUSM of the Judicial District.

USMS federal detainees sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement on Detainers and then only with the concurrence of the district United States Marshal (USM).

Optional Guard/Transportation Services to Medical Facility

If Medical Services in block 13 on page (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for federal detainees housed at their facility to and from a medical facility for outpatient care, and transportation and stationary guard services for federal detainees admitted to a medical facility.

These services should be performed by at least two armed qualified law enforcement or correctional officer personnel. If the Local Government is unable to meet this requirement, the Local Government may seek a waiver of this requirement from the local U.S. Marshal.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirement for security, prisoner monitoring, visitation, and contraband control.

If an hourly rate for these services has been agreed upon to reimburse the Local Government it will be stipulated on page (1) of this Agreement. After 36 months, if a rate adjustment is desired, the Local

Agreement Number 60-97-0010

Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Optional Guard/Transportation Services to U.S. Courthouse

If U.S. Courthouse in block 13 on page (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for federal detainees housed at its facility to and from the U.S. Courthouse.

These services should be performed by at least two armed qualified law enforcement or correctional officer personnel. If the Local Government is unable to meet this requirement, the Local Government may seek a waiver of this requirement from the local U.S. Marshal.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at the courthouse, the Local Government's transportation and escort guard will turn federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport federal detainees to any U.S. Courthouse without a specific request from the USM who will provide the detainee's name, the U.S. Courthouse, and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation.

If an hourly rate for these services has been agreed upon to reimburse the Local Government it will be stipulated on page (1) of this Agreement. After 36 months, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Special Notifications

The Local Government shall notify the Federal Government of any activity by a federal detainee which would likely result in litigation or alleged criminal activity.

The Local Government shall immediately notify the Federal Government of an escape of a federal detainee. The Local Government shall use all reasonable means to apprehend the escaped

Agreement Number 60-97-0010

federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped federal detainees. Additionally, the Local Government shall notify the Federal Government as soon as possible when a federal detainee is involved in an attempted escape or conspiracy to escape from the facility.

In the event of the death or assault of a federal detainee, the Local Government shall immediately notify the Federal Government.

Prisoner Rape Elimination Act (PREA)

The detention facility is requested to post the Prisoner Rape Elimination Act brochure/bulletin in each housing unit of the facility. All detainees have a right to be safe and free from sexual harassment and sexual assaults. (See Page 11)

Service Contract Act

This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available. The full text of this provision may be accessed electronically at this address: www.arnet.gov.

Federal Acquisition Regulation Clause(s):

52.222-41 Service Contract Act of 1965, as Amended (July 2005)

52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

52.222-43 Fair Labor Standards Act and the Service Contract Act – Price Adjustment (Multiyear and Option Contracts) (May 1989)

The current Local Government wage rates shall be the prevailing wages unless notified by the Federal Government.

Per-Diem Rate

The Federal Government will use various price analysis techniques and procedures to ensure the per-diem rate established by this Agreement is considered a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

1. Comparison of the requested per-diem rate with the independent government estimate for detention services, otherwise known as the Core Rate;

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2. Comparison with per-diem rates at other state or local facilities of similar size and economic conditions;
3. Comparison of previously proposed prices and previous Federal Government and commercial contract prices with current proposed prices for the same or similar items;
4. Evaluation of the provided jail operating expense information;

The firm-fixed per-diem rate for services is \$70.00, and shall not be subject to adjustment on the basis of Geauga County Sheriffs Office actual cost experience in providing the service. The per-diem rate shall be fixed for a period from the effective date of the Agreement forward for 36 months. The per-diem rate covers the support of one federal detainee per "federal detainee day", which shall include the day of arrival, but not the day of departure.

After 36 months, if a rate adjustment is desired, the Local Government shall submit a request through the Electronic Intergovernmental Agreements area of the Detention Services Network (DSNetwork). All information pertaining to the jail on DSNetwork will be required before a new per-diem rate can be considered.

Billing and Financial Provisions

The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to each Federal Government component responsible for federal detainees housed at the facility.

Addresses for the components are:

United States Marshals Service
Northern District of Ohio
201 Superior Avenue
U.S. Courthouse
Cleveland, Ohio 44114
(216) 522-2150

Bureau of Prisons
Community Corrections – Junction Business Park
10010 Junction Drive, Suite 100-N
Annapolis Junction, Maryland 20701
(301) 317-7021

Agreement Number 60-97-0010

To constitute a proper monthly invoice, the name and address of the facility, the name of each federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per diem rate as approved in the Agreement, and the total amount billed (total days multiplied by the rate per day) shall be listed, along with the name, title, complete address and telephone number of the Local Government official responsible for invoice preparation. Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

Payment Procedures

The Federal Government will make payments to the Local Government on a monthly basis, promptly after receipt of an appropriate invoice. The Local Government shall provide a remittance address below:

Geauga County Sheriffs Office

12450 Merritt Rd. Chardon, OH 44024

Modifications and Disputes

Either party may initiate a request for modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both the parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

Inspection of Services

The Local Government agrees to allow periodic inspections of the facility by Federal Government inspectors. Findings of the inspection will be shared with the facility administrator in order to promote improvements to facility operations, conditions of confinement, and levels of services.

Agreement Number 60-97-0010

Litigation

The Federal Government shall be notified, in writing, of all litigation pertaining to this Agreement and provided copies of any pleadings filed or said litigation within 5 working days of the filing.

The Local Government shall cooperate with the Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.

Prisoner Rape Elimination Act Reporting Information

SEXUAL ASSAULT AWARENESS

This document is requested to be posted in each Housing Unit Bulletin Board at all Contract Detention Facilities. This document may be used and adapted by Intergovernmental Service Agreement Providers.

While detained by the Department of Justice, United States Marshals Service, you have a right to be safe and free from sexual harassment and sexual assaults.

Definitions

A. Detainee-on-Detainee Sexual Abuse/Assault

One or more detainees engaging in or attempting to engage in a sexual act with another detainee or the use of threats, intimidation, inappropriate touching or other actions and/or communications by one or more detainees aimed at coercing and/or pressuring another detainee to engage in a sexual act.

B. Staff-on-Detainee Sexual Abuse/Assault

Staff member engaging in, or attempting to engage in a sexual act with any detainee or the intentional touching of a detainee's genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desires of any person. Sexual abuse/assault of detainees by staff or other detainees is an inappropriate use of power and is prohibited by DOJ policy and the law.

C. Staff Sexual Misconduct is:

Sexual behavior between a staff member and detainee which can include, but is not limited to indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees.

Prohibited Acts

A detainee, who engages in inappropriate sexual behavior with or directs it at others, can be charged with the following Prohibited Acts under the Detainee Disciplinary Policy.

- Using Abusive or Obscene Language
- Sexual Assault
- Making a Sexual Proposal
- Indecent Exposure
- Engaging in Sex Act

Detention as a Safe Environment

While you are detained, no one has the right to pressure you to engage in sexual acts or engage in unwanted sexual behavior regardless of your age, size, race, or ethnicity. Regardless of your sexual orientation, you have the right to be safe from unwanted sexual advances and acts.

Confidentiality

Information concerning the identity of a detainee victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have the need to know in order to make decisions concerning the detainee-victim's welfare and for law enforcement investigative purposes.

Report All Assaults!

If you become a victim of a sexual assault, you should report it immediately to any staff person you trust, to include housing officers, chaplains, medical staff, supervisors or Deputy U.S.

Marshals. Staff members keep the reported information confidential and only discuss it with the appropriate officials on a need to know basis. If you are not comfortable reporting the assault to staff, you have other options:

- Write a letter reporting the sexual misconduct to the person in charge or the United States Marshal. To ensure confidentiality, use special (Legal) mail procedures.
- File an Emergency Detainee Grievance - If you decide your complaint is too sensitive to file with the Officer in Charge, you can file your Grievance directly with the Field Office Director. You can get the forms from your housing unit officer, or a facility supervisor.
- Write to the Office of Inspector General (OIG), which investigates allegations of staff misconduct. The address is: Office of Inspector General, U.S. Department of Justice, 950 Pennsylvania Ave. Room 4706, Washington, DC. 20530
- Call, at no expense to you, the Office of Inspector General (OIG). The phone number is 1-800-869-4499.

Individuals who sexually abuse or assault detainees can only be disciplined or prosecuted if the abuse is reported.

A publication of the Office of the Federal Detention Trustee
Washington, DC

QuickTime™ and a
document viewer
are needed to see this picture.

Published February 2008



U.S. Department of Justice

United States Marshals Service

Prisoner Operations Division

Washington, DC 20530-1000

January 7, 2010

MEMORANDUM TO: Angel Gonzalez
Chief Deputy United States Marshal
Northern District of Ohio

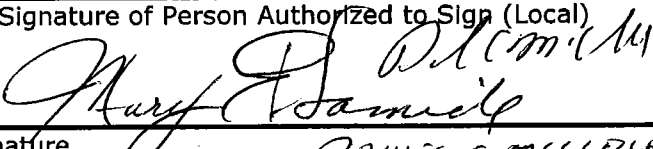

FROM: Renita L. Barbee *Renita L. Barbee*
Senior Grants Specialist
Detention Management – East
Prisoner Operations Division

SUBJECT: Geauga County Sheriff's Office

The above mentioned certified IGA modification is attached. A copy should also be sent to the appropriate Bureau of Prisons (BOP) Community Corrections Manager and Immigration and Customs Enforcement (ICE) regional office, if included in the IGA. Please make sure that the Administrative Officer and Criminal Clerk has a copy of the executed documents so that they are aware of the current jail day rate and any special terms and conditions (i.e. guard/transportation services, mileage, etc.).

If you have questions, please contact Renita L. Barbee, Senior Grants Specialist at (202) 616-0559.

Cc: Geauga County Sheriff's Office

1. Agreement Number 60-97-0010	2. Effective Date See Block 19.	3. Facility Code(s) 5AY	4. DUNS Number 040288008
5. Issuing Federal Agency United States Marshals Service Prisoner Operations Division Detention Management - East Washington, DC 20530-1000		6. Local Government Geauga County Sheriffs Office 12450 Merritt Rd. Chardon, OH 44024 Tax ID#: 34-6001208	
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17. Prisoner and Detainee Type Authorized <input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female <input type="checkbox"/> ICE Detainees	18. Other Authorized Agency User <input checked="" type="checkbox"/> BOP <input type="checkbox"/> ICE	19. Signature of Person Authorized to Sign (Federal)  Signature Renita L. Barbee Name Senior Grants Specialist Title <u>11/1/2010</u> Date	

APPROVED AS TO FORM


 GEauga CO. PROSECUTOR'S OFFICE

Agreement Number 60-97-0010

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Agreement Number 60-97-0010

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The population, hereinafter referred to as "federal detainees," will include individuals charged with federal offenses and detained while awaiting trial, individuals who have been sentenced and are awaiting designation and transport to a BOP facility, and individuals who are awaiting a hearing on their immigration status or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of federal detainees in accordance with all state and local laws, standards, regulations, policies and court orders applicable to the operation of the facility. Detainees shall also be housed in a manner that is consistent with federal law and the Federal Performance-based Detention Standards.

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Agreement Number 60-97-0010

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The Local Government shall provide federal detainees with the full range of medical care inside the detention facility. The level of care inside the facility should be the same as that provided to state and local detainees. The Local Government is financially responsible for all medical care provided inside the facility to federal detainees. This includes the cost of all medical, dental, and mental health care as well as the cost of medical supplies, over the counter prescriptions and, any prescription medications routinely stocked by the facility which are provided to federal detainees. The cost of all of the above referenced medical care is covered by the federal per diem rate. However, if dialysis is provided within the facility, the Federal Government will pay for the cost of that service.

The Federal Government is financially responsible for all medical care provided outside the facility to federal detainees. The Federal Government must be billed directly by the medical care provider not the Local Government. In order to ensure that Medicare rates are properly applied, medical claims for federal detainees must be on Centers for Medicare and Medicaid (CMS) Forms in order to be re-priced at Medicare rates in accordance with Title 18, USC Section 4006. The Local Government is required to immediately forward all medical claims for federal detainees to the Federal Government for processing.

All outside medical care provided to federal detainees must be pre-approved by the Federal Government. In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the federal detainee's illness or injury as well as the types of treatment provided.

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Medical care for federal detainees shall be provided by the Local Government in accordance with the provisions of USMS, Publication 100-Prisoner Health Care Standards (www.usmarshals.gov/prisoner/standards.htm) and in compliance with USMS Inspection Guidelines, USM 218 Detention Facility Investigative Report. The Local Government is responsible for all associated medical record keeping.

The facility shall have in place an adequate infectious disease control program which includes testing of all federal detainees for Tuberculosis (TB) as soon as possible after intake (not to exceed 14 days). When Purified Protein Derivative (PPD) skin tests are utilized, they shall be read between 48 and 72 hours after placement.

TB testing shall be accomplished in accordance with the latest Centers for Disease Control (CDC) Guidelines and the result promptly documented in the federal detainee's medical record. Special requests for expedited TB testing and clearance (to include time sensitive moves) will be accomplished through advance coordination by the Federal Government and Local Government.

The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB or any other highly communicable disease such as Severe Acute Respiratory Syndrome (SARS), Avian Flu, Methicillin-resistant Staphylococcus Aureus (MRSA), Chicken Pox, etc., which might affect scheduled transports or productions so that protective measures can be taken by the Federal Government.

When a federal detainee is being transferred and/or released from the facility, they will be provided with seven days of prescription medication which will be dispensed from the facility. When possible, generic medications should be prescribed. Medical records must travel with the federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a federal detainee is moved.

Federal detainees may be charged a medical co-payment by the Local Government in accordance with the provisions of Title 18, USC Section 4013(d). The Federal Government is not responsible for medical co-payments and cannot be billed for these costs even for indigent federal prisoners.

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Receiving and Discharge of Federal Detainees

The Local Government agrees to accept federal detainees only upon presentation by a law enforcement officer of the Federal Government with proper agency credentials.

The Local Government shall not relocate a federal detainee from one facility under its control to another facility not described in this Agreement without permission of the Federal Government.

The Local Government agrees to release federal detainees only to law enforcement officers of the Federal Government agency initially committing the federal detainee (i.e., Drug Enforcement Administration, Bureau of Immigration and Customs Enforcement, etc.) or to a Deputy United States Marshal (DUSM). Those federal detainees who are remanded to custody by a DUSM may only be released to a DUSM or an agent specified by the DUSM of the Judicial District.

USMS federal detainees sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement on Detainers and then only with the concurrence of the district United States Marshal (USM).

Optional Guard/Transportation Services to Medical Facility

If Medical Services in block 13 on page (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for federal detainees housed at their facility to and from a medical facility for outpatient care, and transportation and stationary guard services for federal detainees admitted to a medical facility.

These services should be performed by at least two armed qualified law enforcement or correctional officer personnel. If the Local Government is unable to meet this requirement, the Local Government may seek a waiver of this requirement from the local U.S. Marshal.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirement for security, prisoner monitoring, visitation, and contraband control.

If an hourly rate for these services has been agreed upon to reimburse the Local Government it will be stipulated on page (1) of this Agreement. After 36 months, if a rate adjustment is desired, the Local

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Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Optional Guard/Transportation Services to U.S. Courthouse

If U.S. Courthouse in block 13 on page (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for federal detainees housed at its facility to and from the U.S. Courthouse.

These services should be performed by at least two armed qualified law enforcement or correctional officer personnel. If the Local Government is unable to meet this requirement, the Local Government may seek a waiver of this requirement from the local U.S. Marshal.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at the courthouse, the Local Government's transportation and escort guard will turn federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport federal detainees to any U.S. Courthouse without a specific request from the USM who will provide the detainee's name, the U.S. Courthouse, and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation.

If an hourly rate for these services has been agreed upon to reimburse the Local Government it will be stipulated on page (1) of this Agreement. After 36 months, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Special Notifications

The Local Government shall notify the Federal Government of any activity by a federal detainee which would likely result in litigation or alleged criminal activity.

The Local Government shall immediately notify the Federal Government of an escape of a federal detainee. The Local Government shall use all reasonable means to apprehend the escaped

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federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped federal detainees. Additionally, the Local Government shall notify the Federal Government as soon as possible when a federal detainee is involved in an attempted escape or conspiracy to escape from the facility.

In the event of the death or assault of a federal detainee, the Local Government shall immediately notify the Federal Government.

Prisoner Rape Elimination Act (PREA)

The detention facility is requested to post the Prisoner Rape Elimination Act brochure/bulletin in each housing unit of the facility. All detainees have a right to be safe and free from sexual harassment and sexual assaults. (See Page 11)

Service Contract Act

This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available. The full text of this provision may be accessed electronically at this address: www.arnet.gov.

Federal Acquisition Regulation Clause(s):

52.222-41 Service Contract Act of 1965, as Amended (July 2005)

52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

52.222-43 Fair Labor Standards Act and the Service Contract Act – Price Adjustment (Multiyear and Option Contracts) (May 1989)

The current Local Government wage rates shall be the prevailing wages unless notified by the Federal Government.

Per-Diem Rate

The Federal Government will use various price analysis techniques and procedures to ensure the per-diem rate established by this Agreement is considered a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

1. Comparison of the requested per-diem rate with the independent government estimate for detention services, otherwise known as the Core Rate;

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2. Comparison with per-diem rates at other state or local facilities of similar size and economic conditions;
3. Comparison of previously proposed prices and previous Federal Government and commercial contract prices with current proposed prices for the same or similar items;
4. Evaluation of the provided jail operating expense information;

The firm-fixed per-diem rate for services is \$70.00, and shall not be subject to adjustment on the basis of Geauga County Sheriffs Office actual cost experience in providing the service. The per-diem rate shall be fixed for a period from the effective date of the Agreement forward for 36 months. The per-diem rate covers the support of one federal detainee per "federal detainee day", which shall include the day of arrival, but not the day of departure.

After 36 months, if a rate adjustment is desired, the Local Government shall submit a request through the Electronic Intergovernmental Agreements area of the Detention Services Network (DSNetwork). All information pertaining to the jail on DSNetwork will be required before a new per-diem rate can be considered.

Billing and Financial Provisions

The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to each Federal Government component responsible for federal detainees housed at the facility.

Addresses for the components are:

United States Marshals Service
Northern District of Ohio
201 Superior Avenue
U.S. Courthouse
Cleveland, Ohio 44114
(216) 522-2150

Bureau of Prisons
Community Corrections – Junction Business Park
10010 Junction Drive, Suite 100-N
Annapolis Junction, Maryland 20701
(301) 317-7021

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To constitute a proper monthly invoice, the name and address of the facility, the name of each federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per diem rate as approved in the Agreement, and the total amount billed (total days multiplied by the rate per day) shall be listed, along with the name, title, complete address and telephone number of the Local Government official responsible for invoice preparation. Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

Payment Procedures

The Federal Government will make payments to the Local Government on a monthly basis, promptly after receipt of an appropriate invoice. The Local Government shall provide a remittance address below:

Geauga County Sheriffs Office

12450 Merritt Rd. Chardon, OH 44024

Modifications and Disputes

Either party may initiate a request for modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both the parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

Inspection of Services

The Local Government agrees to allow periodic inspections of the facility by Federal Government inspectors. Findings of the inspection will be shared with the facility administrator in order to promote improvements to facility operations, conditions of confinement, and levels of services.

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Litigation

The Federal Government shall be notified, in writing, of all litigation pertaining to this Agreement and provided copies of any pleadings filed or said litigation within 5 working days of the filing.

The Local Government shall cooperate with the Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.

Prisoner Rape Elimination Act Reporting Information

SEXUAL ASSAULT AWARENESS

This document is requested to be posted in each Housing Unit Bulletin Board at all Contract Detention Facilities. This document may be used and adapted by Intergovernmental Service Agreement Providers.

While detained by the Department of Justice, United States Marshals Service, you have a right to be safe and free from sexual harassment and sexual assaults.

Definitions

A. Detainee-on-Detainee Sexual Abuse/Assault

One or more detainees engaging in or attempting to engage in a sexual act with another detainee or the use of threats, intimidation, inappropriate touching or other actions and/or communications by one or more detainees aimed at coercing and/or pressuring another detainee to engage in a sexual act.

B. Staff-on-Detainee Sexual Abuse/Assault

Staff member engaging in, or attempting to engage in a sexual act with any detainee or the intentional touching of a detainee's genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desires of any person. Sexual abuse/assault of detainees by staff or other detainees is an inappropriate use of power and is prohibited by DOJ policy and the law.

C. Staff Sexual Misconduct is:

Sexual behavior between a staff member and detainee which can include, but is not limited to indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees.

Prohibited Acts

A detainee, who engages in inappropriate sexual behavior with or directs it at others, can be charged with the following Prohibited Acts under the Detainee Disciplinary Policy.

- Using Abusive or Obscene Language
- Sexual Assault
- Making a Sexual Proposal
- Indecent Exposure
- Engaging in Sex Act

Detention as a Safe Environment

While you are detained, no one has the right to pressure you to engage in sexual acts or engage in unwanted sexual behavior regardless of your age, size, race, or ethnicity. Regardless of your sexual orientation, you have the right to be safe from unwanted sexual advances and acts.

Confidentiality

Information concerning the identity of a detainee victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have the need to know in order to make decisions concerning the detainee-victim's welfare and for law enforcement investigative purposes.

Report All Assaults!

If you become a victim of a sexual assault, you should report it immediately to any staff person you trust, to include housing officers, chaplains, medical staff, supervisors or Deputy U.S.

Marshals. Staff members keep the reported information confidential and only discuss it with the appropriate officials on a need to know basis. If you are not comfortable reporting the assault to staff, you have other options:

- Write a letter reporting the sexual misconduct to the person in charge or the United States Marshal. To ensure confidentiality, use special (Legal) mail procedures.
- File an Emergency Detainee Grievance - If you decide your complaint is too sensitive to file with the Officer in Charge, you can file your Grievance directly with the Field Office Director. You can get the forms from your housing unit officer, or a facility supervisor.
- Write to the Office of Inspector General (OIG), which investigates allegations of staff misconduct. The address is: Office of Inspector General, U.S. Department of Justice, 950 Pennsylvania Ave. Room 4706, Washington, DC. 20530
- Call, at no expense to you, the Office of Inspector General (OIG). The phone number is 1-800-869-4499.

Individuals who sexually abuse or assault detainees can only be disciplined or prosecuted if the abuse is reported.

A publication of the Office of the Federal Detention Trustee
Washington, DC

Published February 2008

QualityTime® and a
are needed to see this picture.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT
Electronically filed

COMMONWEALTH OF KENTUCKY, *et. al.*

Plaintiffs

v.

JOSEPH R. BIDEN in his official capacity as
President of the United States, *et. al.*;

Defendants

Civil Action No. 3:21-cv-
00055-GFVT

DECLARATION OF VICTOR B. MADDOX

I, VICTOR B. MADDOX, hereby declare as follows:

1. I am over the age of 18 and competent to testify to the matter contained herein.
2. I am a resident of Jefferson County, Kentucky.
3. I have personal knowledge of the facts contained in this declaration.
4. I am the Associate Attorney General in the Office of the Kentucky Attorney General Daniel Cameron. The Attorney General is authorized to bring legal actions on behalf of the Commonwealth of Kentucky and its citizens.
5. The Commonwealth, through its agencies and its political subdivisions, routinely contracts with the federal government.

6. The Boone County Jail, the Grayson County Jail and the Laurel County Jail each has a contract with the United States Justice Department through the United States Marshals Service to detain, house, and transport prisoners in custody for federal crimes. A copy of the Boone County contract is attached to this declaration as Exhibit A. A copy of the Grayson County contract is attached to this declaration as Exhibit B. A copy of the Laurel County contract is attached to this declaration as Exhibit C.

7. The revenue from these contracts accounts for a significant portion of each county jail's annual operating budgets.

8. Each of the jailers responsible for these county jails encourages vaccination for staff but does not require vaccination as a condition of employment. Public employees generally are not required to be vaccinated under the laws of the Commonwealth.

9. These county jails, and others in the Commonwealth, currently face significant staffing challenges.

10. Multiple staff members at these jails have said that they will end their employment rather than take a COVID-19 vaccine, which will only exacerbate the current staffing challenges at these facilities.

11. Further, because each of the federal contracts with these jails may be cancelled for any reason on thirty days' notice, the imposition of a vaccine mandate and the reduction in available staff it will likely cause means that the jailers

responsible for these jails may be faced with the loss of their contracts and the significant portion of their annual budgets these contracts provide.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct. Executed on November 8, 2021.

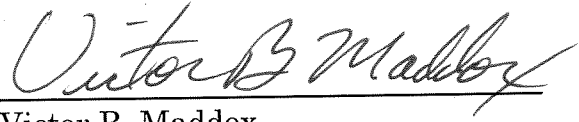
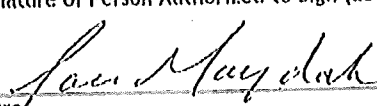
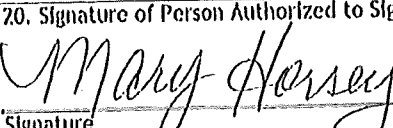

Victor B. Maddox

Exhibit A

U.S. Department of Justice
United States Marshals Service
Prisoner Operations Division

Detention Services
Intergovernmental Agreement

1. Agreement Number 32-02-0110	2. Effective Date 6/1/18	3. Facility Code(s) 4YX	4. DUNS Number 556428266	
5. Issuing Federal Agency United States Marshals Service Prisoner Operations Division Office of Detention Services CG-3, 3 rd Floor Washington, DC 20530-0001		6. Local Government Boone County Jail 2950 E. Washington Square Burlington, KY 41005 Tax ID#: 61-600071		
7. Appropriation Data 15-1020/X	8. Local Contact Person: E-mail: Telephone:	Jason Maydak jmaydak@boonecountyky.org 859-380-8677		
9. Services This agreement is for the housing, safekeeping, and subsistence of Federal detainees, in accordance with content set forth herein.	10. Estimated Number of Federal Beds Male: 225 Female: 25 Total: 250	11. Per Diem Rate \$70.00	12. Period of Performance 60 months	
13. Guard/Transportation Hourly Rate Guard/Transportation Hourly Rate: \$27.26 (Court Guard/Transportation Only) Mileage shall be reimbursed by the Federal Government at the General Services Administration (GSA) Federal Travel Regulation Mileage Rate.		14. Optional Guard/Transportation Services <input checked="" type="checkbox"/> Medical <input type="checkbox"/> Other <input checked="" type="checkbox"/> U.S. Courthouse <input type="checkbox"/> JPATS <input checked="" type="checkbox"/> Encompassed - Guard/Transportation for medical appointments and hospital stays are encompassed in the per diem.		
15. Department Of Labor Wage Determination <input type="checkbox"/> Wages Incorporated _____		17. Signature of Person Authorized to Sign (Local)  Signature JASON MAYDAK Print Name J. MAVER Title 6/1/18 Date		
16. Local Government Certification To the best of my knowledge and belief, information submitted in support of this agreement is true and correct. This document has been duly authorized by the governing authorities of their applying Department or Agency State or County Government and therefore agree to comply with all provisions set forth herein this document.		20. Signature of Person Authorized to Sign (Federal)  Signature Mary Horsey Print Name Grants Specialist Title 6/14/18 Date		
18. Federal Detainee Type Authorized <input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female	19. Other Authorized Agency User <input checked="" type="checkbox"/> BOP <input checked="" type="checkbox"/> ICE <input type="checkbox"/> Other _____			

Agreement Number 32-02-0110

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Agreement Number 32-02-0110

Authority

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Act of 2001 (Public Law 106-553), this Agreement is entered into between the United States Marshals Service (hereinafter referred to as the "Federal Government") and BOONE COUNTY (hereinafter referred to as "Local Government"), who hereby agree as follows:

Purpose of Agreement and Security Provided

The Federal Government and the Local Government establish this Agreement that allows the United States Marshals Service (USMS) or other authorized agency user as noted in block #19 on page (1) to house Federal detainees with the Local Government at the BOONE COUNTY JAIL, 2950 E. WASHINGTON SQUARE, BURLINGTON, KY 41005 (hereinafter referred to as "the Facility") designated in #6 page 1.

The population(hereinafter referred to as "Federal detainees,") will include individuals charged with Federal offenses and detained while awaiting trial, individuals who have been sentenced and are awaiting designation and transport to a Bureau of Prisons (BOP) facility, and individuals who are awaiting a hearing on their immigration status or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of Federal detainees in accordance with all state and local laws, standards, regulations, policies and court orders applicable to the operation of the Facility. Detainees shall also be housed in a manner that is consistent with Federal law and the Core Detention Standards and/or any other standards required by an authorized agency whose detainees are housed by the Local Government pursuant to this Agreement.

The USMS ensures the secure custody, care, and safekeeping of USMS detainees. Accordingly, all housing or work assignments, and recreation or other activities for USMS detainees are permitted only within secure areas of the building or within the secure external recreational/exercise areas.

At all times, the Federal Government shall have access to the Facility and to the Federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period going back three (3) years from the date of request by the Federal Government.

Period of Performance and Termination

This Agreement is effective upon the date of on page 1 in block #2 and signature of the authorized USMS Prisoner Operations Division official, and remains in effect unless inactivated in writing by either party. Either party may terminate this Agreement for any reason with written notice at least thirty (30) calendar days in advance of termination, unless an emergency situation requires the immediate relocation of Federal detainees.

Where the Local Government has received a Cooperative Agreement Program (CAP) award, the termination provisions of the CAP prevail.

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Assignment and Outsourcing of Jail Operations

The overall management and operation of the Facility housing Federal detainees may not be contracted out without the prior express written consent of the Federal Government.

Medical Services

The Local Government shall provide Federal detainees with the same level and range of care inside the Facility as that provided to state and local detainees. The Local Government is financially responsible for all medical care provided inside the Facility to Federal detainees. This includes the cost of all medical, dental, and mental health care as well as the cost of medical supplies, over-the-counter medications and, any prescription medications routinely stocked by the Facility which are provided to Federal detainees. When possible, generic medications should be prescribed. The cost of all of the above-referenced medical care is covered by the Federal per diem rate. However, for specialized medical services not routinely provided within the Facility, such as dialysis, the Federal Government will pay for the cost of that service.

The Federal Government is financially responsible for all medical care provided outside the Facility to Federal detainees. The Federal Government must be billed directly by outside medical care providers pursuant to arrangements made by the Local Government for outside medical care. The Local Government should utilize outside medical care providers that are covered by the USMS's National Managed Care Contract (NMCC) to reduce the costs and administrative workload associated with these medical services. The Local Government can obtain information about NMCC covered providers from the local USMS District Office. The Federal Government will be billed directly by the medical care provider not the Local Government. To ensure that Medicare rates are properly applied, medical claims for Federal detainees must be on Centers for Medicare and Medicaid (CMS) Forms so that they can be re-priced to Medicare rates in accordance with the provisions of Title 18 U.S.C. Section 4006. If the Local Government receives any bills for medical care provided to Federal detainees outside the Facility, the Local Government should immediately forward those bills to the Federal Government for processing.

All outside medical care provided to Federal detainees must be pre-approved by the Federal Government except in a medical emergency. In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the Federal detainee's illness or injury as well as the types of treatment provided.

Medical care for Federal detainees shall be provided by the Local Government in accordance with the provisions of USMS, Publication 100-Prisoner Health Care Standards (www.usmarshals.gov/prisoner/standards.htm) and in compliance with the Core Detention Standards or those standards which may be required by any other authorized agency user. The Local Government is responsible for all associated medical record keeping.

The Facility shall have in place an adequate infectious disease control program which includes testing of all Federal detainees for Tuberculosis (TB) within 14 days of intake.

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TB testing shall be accomplished in accordance with the latest Centers for Disease Control (CDC) Guidelines and the result promptly documented in the Federal detainee's medical record. Special requests for expedited TB testing and clearance (to include time sensitive moves) will be accomplished through advance coordination by the Federal Government and Local Government.

The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB or any other highly communicable diseases such as Severe Acute Respiratory Syndrome (SARS), Avian Flu, Methicillin-Resistant Staphylococcus Aureus (MRSA), Chicken Pox, etc., which might affect scheduled transports or productions so that protective measures can be taken by the Federal Government.

When a Federal detainee is being transferred and/or released from the Facility, they will be provided with seven (7) days of prescription medication which will be dispensed from the Facility. Medical records and the USM-553 must travel with the Federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a Federal detainee is moved.

Federal detainees may be charged a medical co-payment by the Local Government in accordance with the provisions of Title 18, USC Section 4013(d). The Federal Government is not responsible for medical co-payments and cannot be billed for these costs even for indigent Federal detainees.

Affordable Care Act

The Local Government shall provide Federal detainees, upon release of custody, information regarding the Affordable Care Act, The Affordable Care Act website is located at <http://www.hhs.gov/healthcare/about-the-aca/index.html>.

Receiving and Discharge of Federal Detainees

The Local Government agrees to accept Federal detainees only upon presentation by a law enforcement officer of the Federal Government or a USMS designee with proper agency credentials.

The Local Government shall not relocate a Federal detainee from one facility under its control to another facility not described in this Agreement without permission of the Federal Government. Additional facilities within the same Agreement shall be identified in a modification.

The Local Government agrees to release Federal detainees only to law enforcement officers of the authorized Federal Government agency initially committing the Federal detainee (i.e., Drug Enforcement Administration (DEA), Immigration and Customs Enforcement (ICE), etc.) or to a Deputy United States Marshal (DUSM) or USMS designee with proper agency credentials. Those Federal detainees who are remanded to custody by a DUSM may only be released to a DUSM or an agent specified by the DUSM of the Judicial District.

USMS Federal detainees sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement on Detainers and then only with the concurrence of the jurisdictional United States Marshal (USM).

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Optional Guard/Transportation Services to Medical Facility

If Medical Facility in block #14 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at the Facility to and from a medical facility for outpatient care, and transportation and stationary guard services for Federal detainees admitted to a medical facility.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel. Criteria as specified by the County Entity running the facility. In all cases these are part of a fulltime Law Enforcement Officer (LEO) or Correctional Officer (CO) that have met the minimum training requirements.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirement for security, prisoner monitoring, visitation, and contraband control.

If an hourly rate for these services have been agreed upon to reimburse the Local Government, it will be stipulated in block #13 on page one (1) of this Agreement. After sixty (60) months, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Optional Guard/Transportation Services to U.S. Courthouse

If U.S. Courthouse in block #14 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at its facility to and from the U.S. Courthouse.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at the courthouse, the Local Government's transportation and escort guard will turn Federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport Federal detainees to any U.S. Courthouse without a specific request from the USM or their designee who will provide the detainee's name, the U.S. Courthouse, and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation unless otherwise authorized by the USMS.

If an hourly rate for these services have been agreed upon to reimburse the Local Government, it will be stipulated in block #13 on page one (1) of this Agreement. After sixty (60) months, if a rate

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adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Optional Guard/Transportation Services to Justice Prisoner & Alien Transportation System (JPATS)

If JPATS in block #14 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at its facility to and from the JPATS.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at JPATS, the Local Government's transportation and escort guards will turn federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport federal detainees to the airlift without a specific request from the USM who will provide the detainee's name, location (district), and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation.

If an hourly rate for these services has been agreed upon to reimburse the Local Government, it will be stipulated on in block #13 on page one (1) of this Agreement. After sixty (60) months, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Special Notifications

The Local Government shall notify the Federal Government of any activity by a Federal detainee which would likely result in litigation or alleged criminal activity.

The Local Government shall immediately notify the Federal Government of an escape of a Federal detainee. The Local Government shall use all reasonable means to apprehend the escaped Federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped Federal detainees. Additionally, the Local Government shall notify the Federal Government as soon as possible when a Federal detainee is involved in an attempted escape or conspiracy to escape from the Facility.

In the event of the death or assault or a medical emergency of a Federal detainee, the Local Government shall immediately notify the Federal Government.

Agreement Number 32-02-0110

Restrictive Housing and Suicide Prevention

The Local Government shall have written policies, procedures, and practices requiring that all detainees in restrictive housing are personally observed by a correctional officer at least twice per hour, but no more than 40 minutes apart, on an irregular schedule. Detainees who are violent or mentally ill or who demonstrate unusual or bizarre behavior receive more frequent observation; suicidal detainees are under constant observation.

The Local Government shall immediately notify the concerned Chief Deputy U.S. Marshal, or his or her designee, when a member of a vulnerable population is placed in restrictive housing or their restrictive housing status changes.

The Local Government shall also provide reports to the USMS on a monthly basis listing all USMS detainees who were detained in restrictive housing, and the reasons for their assignment to restrictive housing. The report shall be submitted to the Chief Deputy U.S. Marshal, or his or her designee, no later than the tenth day of each month in a standard format established by the USMS.

The Local Government shall have a comprehensive suicide-prevention program in place incorporating all aspects of identification, assessment, evaluation, treatment, preventive intervention, and annual training of all medical, mental health, and correctional staff.

For the purposes of this Agreement, "restrictive housing" means any type of detention that involves all of the following three basic elements:

1. Removal from the general population, whether voluntary or involuntary;
2. Placement in a locked room or cell, whether alone or with another detainee; and
3. Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

For the purposes of this Agreement, "vulnerable population" means juveniles and individuals with serious mental illness.

Prison Rape Elimination Act (PREA)

The Facility must post the Prison Rape Elimination Act brochure/bulletin in each housing unit of the Facility. The Facility must abide by all relevant PREA regulations.

Service Contract Act

This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available. The full text of this provision may be accessed electronically at this address:
<http://www.dol.gov/oasam/regis/statutes/351.htm>.

Federal Acquisition Regulation Clause(s):

52.222-41 Service Contract Act of 1965, as Amended (July 2005)

Agreement Number 32-02-0110

52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

52.222-43 Fair Labor Standards Act and the Service Contract Act - Price Adjustment (Multiyear and Option Contracts) (May 1989)

The current Local Government wage rates shall be the prevailing wages unless notified by the Federal Government.

If the Department of Labor Wage Determination block #15 on page one (1) of this Agreement is checked, the Local Government agrees, in accordance with FAR PART 52.222.43 (f), must notify the Federal Government of any increase or decrease in applicable wages and fringe benefits claimed under this clause within 30 days after receiving a new wage determination.

Per-Diem Rate

The Federal Government will use various price analysis techniques and procedures to ensure the per-diem rate established by this Agreement is considered a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

1. Comparison of the requested per-diem rate with the independent Federal Government estimate for detention services, otherwise known as the Core Rate;
2. Comparison with per-diem rates at other state or local facilities of similar size and economic conditions;
3. Comparison of previously proposed prices and previous Federal Government and commercial contract prices with current proposed prices for the same or similar items;
4. Evaluation of the provided jail operating expense information;

The firm-fixed per-diem rate for services is stipulated in block #11 on page (1) of this agreement, and shall not be subject to adjustment on the basis of ROONE COUNTY JAIL actual cost experience in providing the service. The per-diem rate shall be fixed for a period from the effective date of this Agreement forward for sixty (60) months. The per-diem rate covers the support of one Federal detainee per "Federal detainee day", which shall include the day of arrival, but not the day of departure.

After sixty (60) months, if a per-diem rate adjustment is desired, the Local Government shall submit a request through the United States Marshals Service's electronic Intergovernmental Agreements (eIGA) area of the Detention Services Network (DSNetwork). All information pertaining to the Facility on the DSNetwork will be required before a new per-diem rate will be considered.

Billing and Financial Provisions

The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to each Federal Government component responsible for Federal detainees housed at the Facility.

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Addresses for the components are:

United States Marshals Service
Eastern District of Kentucky
101 Barr Street
Room 162
Lexington, KY 40507
859-223-2513

United States Marshals Service
Southern District Ohio
Joseph P. Kinneary U.S. Courthouse
85 Marconi Blvd, Room 460
Columbus, OH 43215
614-469-5540

Bureau of Prisons
Residential Reentry Management
302 Sentinel Drive
Suite 200
Annapolis Junction, MD 20701
301-317-3142

Immigration Customs Enforcement
Enforcement and Removal
Operations Chicago Field Office
101 West Congress Parkway, 4th Floor
Chicago, IL 60605
312-347-2400

To constitute a proper monthly invoice, the name and address of the Facility, the name of each Federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per diem rate as approved in the Agreement, and the total amount billed (total days multiplied by the per-diem rate per day) shall be listed, along with the name, title, complete address, and telephone number of the Local Government official responsible for invoice preparation. Additional services provided, such as transportation and guard services, shall be listed separately and itemized. Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

Payment Procedures

The Federal Government will make payments to the Local Government at the address listed in block #6 on page one (1) of this Agreement, on a monthly basis, promptly, after receipt of an appropriate invoice.

Hold Harmless

It is understood and agreed that the Local Government shall fully defend, indemnify, and hold harmless the United States of America, its officers, employees, agents, and servants, individually and officially, for any and all liability caused by any act of any member of the Local Government or anyone else arising out of the use, operation, or handling of any property (to include any vehicle, equipment, and supplies) furnished to the Local Government in which legal ownership is retained by the United States of America, and to pay all claims, damages, judgments, legal costs, adjuster fees, and attorney fees related thereto. The Local Government will be solely responsible for all maintenance, storage, and other expenses related to the care and responsibility for all property furnished to the Local Government.

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Disputes

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both the parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

Inspection of Services

Inspection standards for detainees may differ among authorized agency users. The Local Government agrees to allow periodic inspections by Federal Government inspectors, to include approved Federal contractors, in accordance with the Core Detention Standards required by any or all of the Federal authorized agency users whose detainees may be housed pursuant to this Agreement. Findings of the inspections will be shared with the Facility administrator in order to promote improvements to Facility operations, conditions of confinement, and levels of services.

Modifications

For all modifications except for full or partial terminations, either party may initiate a request for modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

Litigation

The Federal Government shall be notified, in writing, of all litigation pertaining to this Agreement and provided copies of any pleadings filed or said litigation within five (5) working days of the filing.

The Local Government shall cooperate with the Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.

Agreement Number 32-02-0110

Rape Elimination Act Reporting Information

SEXUAL ASSAULT AWARENESS

This document is requested to be posted in each Housing Unit Bulletin Board at all Contract Detention Facilities. This document may be used and adapted by Intergovernmental Service Agreement Providers.

While detained by the Department of Justice, United States Marshals Service, you have a right to be safe and free from sexual harassment and sexual assaults.

Definitions

A. Detainee-on-Detainee Sexual Abuse/Assault

One or more detainees engaging in or attempting to engage in a sexual act with another detainee or the use of threats, intimidation, inappropriate touching or other actions and/or communications by one or more detainees aimed at coercing and/or pressuring another detainee to engage in a sexual act.

B. Staff-on-Detainee Sexual Abuse/Assault

Staff member engaging in, or attempting to engage in a sexual act with any detainee or the intentional touching of a detainee's genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desires of any person. Sexual abuse/assault of detainees by staff or other detainees is an inappropriate use of power and is prohibited by DOJ policy and the law.

C. Staff Sexual Misconduct is:

Sexual behavior between a staff member and detainee which can include, but is not limited to indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees.

Prohibited Acts

A detainee, who engages in inappropriate sexual behavior with or directs it at others, can be charged with the following Prohibited Acts under the Detainee Disciplinary Policy.

- Using Abusive or Obscene Language
- Sexual Assault
- Making a Sexual Proposal
- Indecent Exposure
- Engaging in Sex Act

Detention as a Safe Environment

While you are detained, no one has the right to pressure you to engage in sexual acts or engage in unwanted sexual behavior regardless of your age, size, race, or ethnicity. Regardless of your sexual orientation, you have the right to be safe from unwanted sexual advances and acts.

Confidentiality

Information concerning the identity of a detainee victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have the need to know in order to make decisions concerning the detainee-victim's welfare and for law enforcement investigative purposes.

Report All Assaults

If you become a victim of a sexual assault, you should report it immediately to any staff person you trust, to include housing officers, chaplains, medical staff, supervisors or Deputy U.S. Marshals. Staff members keep the reported information confidential and only discuss it with the appropriate officials on a need to know basis. If you are not comfortable reporting the assault to staff, you have other options:

[Handwritten initials]

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- Write a letter reporting the sexual misconduct to the prison in charge or the United States Marshal. To ensure confidentiality, use special (Legal) mail procedures.
- File an Emergency Detainee Grievance. If you decide your complaint is too sensitive to file with the Officer in Charge, you can file your Grievance directly with the Field Office Director. You can get the forms from your housing unit officer, or a Facility supervisor.
- Write to the Office of Inspector General (OIG), which investigates allegations of staff misconduct. The address is: Office of Inspector General, U.S. Department of Justice, 950 Pennsylvania Ave. Room 4706, Washington, DC 20530
- Call, at no expense to you, the Office of Inspector General (OIG). The phone number is 1-800-869-4499.

Individuals who sexually abuse or assault detainees can only be disciplined or prosecuted if the abuse is reported.

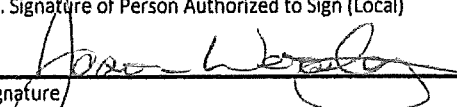
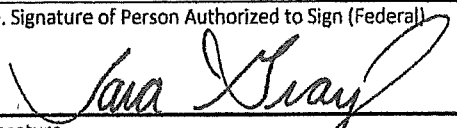
**A publication of the Office of the
Federal Detention Trustee
Washington, DC**

Published February 2008

Exhibit B

U.S. Department of Justice
United States Marshals Service
Prisoner Operations Division

Detention Services
Intergovernmental Agreement

1. Agreement Number 33-95-0057	2. Effective Date October 1, 2019	3. Facility Code(s) 7QH	4. DUNS Number 801626953
5. Issuing Federal Agency United States Marshals Service Prisoner Operations Division Office of Detention Services CG-3, 3 rd Floor Washington, DC 20530-0001		6. Local Government Grayson County Jail 320 Shaw Station Road Leachfield, KY 42754 Tax ID#: 61-6000845	
7. Appropriation Data 15-1020/X	8. Local Contact Person: E-mail: Telephone:	Jason Woosley, Jailer jasonw4102@windstream.net (270) 259-3636	
9. Services	10. Estimated Number of Federal Beds	11. Per Diem Rate	
This agreement is for the housing, safekeeping, and subsistence of Federal detainees, in accordance with content set forth herein.	Male: 335 Female: 30 Total: 365	\$59.00	
12. Guard/Transportation Hourly Rate	13. Optional Guard/Transportation Services		
Guard/Transportation Hourly Rate: \$26.00 Mileage shall be reimbursed by the Federal Government at the General Services Administration (GSA) Federal Travel Regulation Mileage Rate.	<input checked="" type="checkbox"/> Medical <input type="checkbox"/> Other _____ <input checked="" type="checkbox"/> U.S. Courthouse <input checked="" type="checkbox"/> JPATS <input type="checkbox"/> Encompassed _____		
14. Department Of Labor Wage Determination			
<input type="checkbox"/> Wages Incorporated _____			
15. Local Government Certification <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct. This document has been duly authorized by the governing authorities of their applying Department or Agency State or County Government and therefore agree to comply with all provisions set forth herein this document.</i>		16. Signature of Person Authorized to Sign (Local)  Signature Jason Woosley Print Name Jailer Title 9/26/2019 Date	
17. Federal Detainee Type Authorized <input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female	18. Other Authorized Agency User <input checked="" type="checkbox"/> BOP <input checked="" type="checkbox"/> ICE <input type="checkbox"/> Other _____	19. Signature of Person Authorized to Sign (Federal)  Signature Tara Gray Print Name Grants Specialist Title 10-11-19 Date	

Agreement Number 33-95-0057

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Agreement Number 33-95-0057

Authority

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Act of 2001 (Public Law 106-553), this Agreement is entered into between the United States Marshals Service (hereinafter referred to as the "Federal Government") and GRAYSON COUNTY JAIL (hereinafter referred to as "Local Government"), who hereby agree as follows:

Purpose of Agreement and Security Provided

The Federal Government and the Local Government establish this Agreement that allows the United States Marshals Service (USMS) or other authorized agency user as noted in block #18 on page (1) to house Federal detainees with the Local Government at the GRAYSON COUNTY JAIL, 320 SHAW STATION ROAD, LEACHFIELD, KY 42754 (hereinafter referred to as "the Facility") designated in #6 page 1.

The population(hereinafter referred to as "Federal detainees,") will include individuals charged with Federal offenses and detained while awaiting trial, individuals who have been sentenced and are awaiting designation and transport to a Bureau of Prisons (BOP) facility, and individuals who are awaiting a hearing on their immigration status or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of Federal detainees in accordance with all state and local laws, standards, regulations, policies and court orders applicable to the operation of the Facility. Detainees shall also be housed in a manner that is consistent with Federal law and the Federal Performance Based Detention Standards and/or any other standards required by an authorized agency whose detainees are housed by the Local Government pursuant to this Agreement.

The USMS ensures the secure custody, care, and safekeeping of USMS detainees. Accordingly, all housing or work assignments, and recreation or other activities for USMS detainees are permitted only within secure areas of the building or within the secure external recreational/exercise areas.

At all times, the Federal Government shall have access to the Facility and to the Federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period going back three (3) years from the date of request by the Federal Government.

Period of Performance and Termination

This Agreement is effective upon the date of on page 1 in block #2 and signature of the authorized USMS Prisoner Operations Division official, and remains in effect unless inactivated in writing by either party. Either party may terminate this Agreement for any reason with written notice at least thirty (30) calendar days in advance of termination, unless an emergency situation requires the immediate relocation of Federal detainees.

Where the Local Government has received a Cooperative Agreement Program (CAP) award, the termination provisions of the CAP prevail.

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Assignment and Outsourcing of Jail Operations

The overall management and operation of the Facility housing Federal detainees may not be contracted out without the prior express written consent of the Federal Government.

Medical Services

The Local Government shall provide Federal detainees with the same level and range of care inside the Facility as that provided to state and local detainees. The Local Government is financially responsible for all medical care provided inside the Facility to Federal detainees. This includes the cost of all medical, dental, and mental health care as well as the cost of medical supplies, over-the-counter medications and, any prescription medications routinely stocked by the Facility which are provided to Federal detainees. When possible, generic medications should be prescribed. The cost of all of the above-referenced medical care is covered by the Federal per diem rate. However, for specialized medical services not routinely provided within the Facility, such as dialysis, the Federal Government will pay for the cost of that service.

The Federal Government is financially responsible for all medical care provided outside the Facility to Federal detainees. The Federal Government must be billed directly by outside medical care providers pursuant to arrangements made by the Local Government for outside medical care. The Local Government should utilize outside medical care providers that are covered by the USMS's National Managed Care Contract (NMCC) to reduce the costs and administrative workload associated with these medical services. The Local Government can obtain information about NMCC covered providers from the local USMS District Office. The Federal Government will be billed directly by the medical care provider not the Local Government. To ensure that Medicare rates are properly applied, medical claims for Federal detainees must be on Centers for Medicare and Medicaid (CMS) Forms so that they can be re-priced to Medicare rates in accordance with the provisions of Title 18 U.S.C. Section 4006. If the Local Government receives any bills for medical care provided to Federal detainees outside the Facility, the Local Government should immediately forward those bills to the Federal Government for processing.

All outside medical care provided to Federal detainees must be pre-approved by the Federal Government except in a medical emergency. In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the Federal detainee's illness or injury as well as the types of treatment provided.

Medical care for Federal detainees shall be provided by the Local Government in accordance with the provisions of USMS, Publication 100-Prisoner Health Care Standards (www.usmarshals.gov/prisoner/standards.htm) and in compliance with the Federal Performance Based Detention Standards or those standards which may be required by any other authorized agency user. The Local Government is responsible for all associated medical record keeping.

The Facility shall have in place an adequate infectious disease control program which includes testing of all Federal detainees for Tuberculosis (TB) within 14 days of intake.

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TB testing shall be accomplished in accordance with the latest Centers for Disease Control (CDC) Guidelines and the result promptly documented in the Federal detainee's medical record. Special requests for expedited TB testing and clearance (to include time sensitive moves) will be accomplished through advance coordination by the Federal Government and Local Government.

The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB or any other highly communicable diseases such as Severe Acute Respiratory Syndrome (SARS), Avian Flu, Methicillin-Resistant Staphylococcus Aureus (MRSA), Chicken Pox, etc., which might affect scheduled transports or productions so that protective measures can be taken by the Federal Government.

When a Federal detainee is being transferred and/or released from the Facility, they will be provided with seven (7) days of prescription medication which will be dispensed from the Facility. Medical records and the USM-553 must travel with the Federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a Federal detainee is moved.

Federal detainees may be charged a medical co-payment by the Local Government in accordance with the provisions of Title 18, USC Section 4013(d). The Federal Government is not responsible for medical co-payments and cannot be billed for these costs even for indigent Federal detainees.

Affordable Care Act

The Local Government shall provide Federal detainees, upon release of custody, information regarding the Affordable Care Act, The Affordable Care Act website is located at <http://www.hhs.gov/healthcare/about-the-aca/index.html>.

Receiving and Discharge of Federal Detainees

The Local Government agrees to accept Federal detainees only upon presentation by a law enforcement officer of the Federal Government or a USMS designee with proper agency credentials

The Local Government shall not relocate a Federal detainee from one facility under its control to another facility not described in this Agreement without permission of the Federal Government. Additional facilities within the same Agreement shall be identified in a modification.

The Local Government agrees to release Federal detainees only to law enforcement officers of the authorized Federal Government agency initially committing the Federal detainee (i.e., Drug Enforcement Administration (DEA), Immigration and Customs Enforcement (ICE), etc.) or to a Deputy United States Marshal (DUSM) or USMS designee with proper agency credentials. Those Federal detainees who are remanded to custody by a DUSM may only be released to a DUSM or an agent specified by the DUSM of the Judicial District.

USMS Federal detainees sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement on Detainers and then only with the concurrence of the jurisdictional United States Marshal (USM).

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Optional Guard/Transportation Services to Medical Facility

If Medical Facility in block #13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at the Facility to and from a medical facility for outpatient care, and transportation and stationary guard services for Federal detainees admitted to a medical facility.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel. Criteria as specified by the County Entity running the facility. In all cases these are part of a fulltime Law Enforcement Officer (LEO) or Correctional Officer (CO) that have met the minimum training requirements.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirement for security, prisoner monitoring, visitation, and contraband control.

If an hourly rate for these services have been agreed upon to reimburse the Local Government, it will be stipulated in block #12 on page one (1) of this Agreement. After thirty-six (36) months, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Optional Guard/Transportation Services to U.S. Courthouse

If U.S. Courthouse in block #13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at its facility to and from the U.S. Courthouse.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at the courthouse, the Local Government's transportation and escort guard will turn Federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport Federal detainees to any U.S. Courthouse without a specific request from the USM or their designee who will provide the detainee's name, the U.S. Courthouse, and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation unless otherwise authorized by the USMS.

If an hourly rate for these services have been agreed upon to reimburse the Local Government, it will be stipulated in block #12 on page one (1) of this Agreement. After thirty-six (36) months, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Agreement Number 33-95-0057

Optional Guard/Transportation Services to Justice Prisoner & Alien Transportation System (JPATS)

If JPATS in block #13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at its facility to and from the JPATS.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at JPATS, the Local Government's transportation and escort guards will turn federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport federal detainees to the airlift without a specific request from the USM who will provide the detainee's name, location (district), and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation.

If an hourly rate for these services has been agreed upon to reimburse the Local Government, it will be stipulated on in block #12 on page one (1) of this Agreement. After thirty-six (36) months, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Special Notifications

The Local Government shall notify the Federal Government of any activity by a Federal detainee which would likely result in litigation or alleged criminal activity.

The Local Government shall immediately notify the Federal Government of an escape of a Federal detainee. The Local Government shall use all reasonable means to apprehend the escaped Federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped Federal detainees. Additionally, the Local Government shall notify the Federal Government as soon as possible when a Federal detainee is involved in an attempted escape or conspiracy to escape from the Facility.

In the event of the death or assault or a medical emergency of a Federal detainee, the Local Government shall immediately notify the Federal Government.

Restrictive Housing and Suicide Prevention

The Local Government shall have written policies, procedures, and practices requiring that all detainees in restrictive housing are personally observed by a correctional officer at least twice per hour, but no more than 40

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minutes apart, on an irregular schedule. Detainees who are violent or mentally ill or who demonstrate unusual or bizarre behavior receive more frequent observation; suicidal detainees are under constant observation.

The Local Government shall immediately notify the concerned Chief Deputy U.S. Marshal, or his or her designee, when a member of a vulnerable population is placed in restrictive housing or their restrictive housing status changes.

The Local Government shall also provide reports to the USMS on a monthly basis listing all USMS detainees who were detained in restrictive housing, and the reasons for their assignment to restrictive housing. The report shall be submitted to the Chief Deputy U.S. Marshal, or his or her designee, no later than the tenth day of each month in a standard format established by the USMS.

The Local Government shall have a comprehensive suicide-prevention program in place incorporating all aspects of identification, assessment, evaluation, treatment, preventive intervention, and annual training of all medical, mental health, and correctional staff.

For the purposes of this Agreement, "restrictive housing" means any type of detention that involves all of the following three basic elements:

1. Removal from the general population, whether voluntary or involuntary;
2. Placement in a locked room or cell, whether alone or with another detainee; and
3. Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

For the purposes of this Agreement, "vulnerable population" means juveniles and individuals with serious mental illness.

Prison Rape Elimination Act (PREA)

The Facility must post the Prison Rape Elimination Act brochure/bulletin in each housing unit of the Facility. The Facility must abide by all relevant PREA regulations.

Service Contract Act

This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available. The full text of this provision may be accessed electronically at this address: <http://www.dol.gov/oasam/regs/statutes/351.htm>.

Federal Acquisition Regulation Clause(s):

52.222-41 Service Contract Act of 1965, as Amended (July 2005)

52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

52.222-43 Fair Labor Standards Act and the Service Contract Act – Price Adjustment (Multiyear and Option Contracts) (May 1989)

Agreement Number 33-95-0057

The current Local Government wage rates shall be the prevailing wages unless notified by the Federal Government.

If the Department of Labor Wage Determination block #14 on page one (1) of this Agreement is checked, the Local Government agrees, in accordance with FAR PART 52.222.43 (f), must notify the Federal Government of any increase or decrease in applicable wages and fringe benefits claimed under this clause within 30 days after receiving a new wage determination.

Per-Diem Rate

The Federal Government will use various price analysis techniques and procedures to ensure the per-diem rate established by this Agreement is considered a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

1. Comparison of the requested per-diem rate with the independent Federal Government estimate for detention services, otherwise known as the Core Rate;
2. Comparison with per-diem rates at other state or local facilities of similar size and economic conditions;
3. Comparison of previously proposed prices and previous Federal Government and commercial contract prices with current proposed prices for the same or similar items;
4. Evaluation of the provided jail operating expense information;

The firm-fixed per-diem rate for services is stipulated in block #11 on page (1) of this agreement, and shall not be subject to adjustment on the basis of GRAYSON COUNTY JAIL actual cost experience in providing the service. The per-diem rate shall be fixed for a period from the effective date of this Agreement forward for **thirty-six (36) months**. The per-diem rate covers the support of one Federal detainee per "Federal detainee day", which shall include the day of arrival, but not the day of departure.

After **thirty-six (36) months**, if a per-diem rate adjustment is desired, the Local Government shall submit a request through the United States Marshals Service (USMS) electronic Intergovernmental Agreements (eIGA) area of the Detention Services Network (DSNetwork). All information pertaining to the Facility on the DSNetwork will be required before a new per-diem rate will be considered.

Billing and Financial Provisions

The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to each Federal Government component responsible for Federal detainees housed at the Facility.

Agreement Number 33-95-0057

Addresses for the components are:

United States Marshals Service
Western District of Kentucky
114 U.S. Courthouse
601 West Broadway
Louisville, KY 40202

United States Marshals Service
Middle District of Tennessee
110 Ninth Avenue South, Suite A-750
Nashville, TN 37203
(615)736-5417

United States Marshals Service
Western District of Tennessee
167 N. Main Street, Room 1072
Memphis, TN 38103
(901)544-3304

Bureau Office Prisons
RRM Nashville
RESIDENTIAL REENTRY OFFICE
701 BROADWAY ST, SUITE 124
NASHVILLE, TN 37203

United States Marshals Service
Northern District of Indiana
5400 Federal Plaza, Suite 1200
Hammond, IN 46320
(219)852-6776

United States Marshals Service
Southern District of Indiana
46 E. Ohio Street
Indianapolis, IN 46204
(317)226-6566

U.S. Immigrations and Custom
Enforcement
Chicago Field Office
101 W Ida B Wells Drive Suite 4000
Chicago, IL, 60605
Phone: (312) 347-2400

United States Marshals Service
Northern District of Illinois
219 S. Dearborn Street, Suite 2444
Chicago, IL 60604
(312)353-5290

United States Marshals Service
Southern District of West Virginia
300 Virginia Street, East, Suite 3602
Charleston, WV 25301
(304) 347-5136

United States Marshals Service
Eastern District of Tennessee
Howard H. Baker Jr. U.S. Courthouse
800 Market Street, Suite 320
Knoxville, TN 37902
(865) 545-4182

United States Marshals Service
Eastern District of Kentucky
162 Federal Building
101 Barr Street
Lexington, KY 40507
(859) 233-2513

To constitute a proper monthly invoice, the name and address of the Facility, the name of each Federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per diem rate as approved in the Agreement, and the total amount billed (total days multiplied by the per-diem rate per day) shall be listed, along with the name, title, complete address, and telephone number of the Local Government official responsible for invoice preparation. Additional services provided, such as transportation and guard services, shall be listed separately and itemized.

Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

Payment Procedures

The Federal Government will make payments to the Local Government at the address listed in block #6 on page one (1) of this Agreement, on a monthly basis, promptly, after receipt of an appropriate invoice.

Agreement Number 33-95-0057

Hold Harmless

It is understood and agreed that the Local Government shall fully defend, indemnify, and hold harmless the United States of America, its officers, employees, agents, and servants, individually and officially, for any and all liability caused by any act of any member of the Local Government or anyone else arising out of the use, operation, or handling of any property (to include any vehicle, equipment, and supplies) furnished to the Local Government in which legal ownership is retained by the United States of America, and to pay all claims, damages, judgments, legal costs, adjuster fees, and attorney fees related thereto. The Local Government will be solely responsible for all maintenance, storage, and other expenses related to the care and responsibility for all property furnished to the Local Government.

Disputes

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both the parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

Inspection of Services

Inspection standards for detainees may differ among authorized agency users. The Local Government agrees to allow periodic inspections by Federal Government inspectors, to include approved Federal contractors, in accordance with the Federal Performance Based Detention Standards required by any or all of the Federal authorized agency users whose detainees may be housed pursuant to this Agreement. Findings of the inspections will be shared with the Facility administrator in order to promote improvements to Facility operations, conditions of confinement, and levels of services.

Modifications

For all modifications except for full or partial terminations, either party may initiate a request for modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

Litigation

The Federal Government shall be notified, in writing, of all litigation pertaining to this Agreement and provided copies of any pleadings filed or said litigation within five (5) working days of the filing.

The Local Government shall cooperate with the Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.

Agreement Number 33-95-0057

Agreement Number 33-95-0057

Rape Elimination Act Reporting Information

SEXUAL ASSAULT AWARENESS

This document is requested to be posted in each Housing Unit Bulletin Board at all Contract Detention Facilities. This document may be used and adapted by Intergovernmental Service Agreement Providers.

While detained by the Department of Justice, United States Marshals Service, you have a right to be safe and free from sexual harassment and sexual assaults.

Definitions

A. Detainee-on-Detainee Sexual Abuse/Assault

One or more detainees engaging in or attempting to engage in a sexual act with another detainee or the use of threats, intimidation, inappropriate touching or other actions and/or communications by one or more detainees aimed at coercing and/or pressuring another detainee to engage in a sexual act.

B. Staff-on-Detainee Sexual Abuse/Assault

Staff member engaging in, or attempting to engage in a sexual act with any detainee or the intentional touching of a detainee's genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desires of any person. Sexual abuse/assault of detainees by staff or other detainees is an inappropriate use of power and is prohibited by DOJ policy and the law.

C. Staff Sexual Misconduct is:

Sexual behavior between a staff member and detainee which can include, but is not limited to indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees.

Prohibited Acts

A detainee, who engages in inappropriate sexual behavior with or directs it at others, can be charged with the following Prohibited Acts under the Detainee Disciplinary Policy.

- Using Abusive or Obscene Language
- Sexual Assault
- Making a Sexual Proposal
- Indecent Exposure
- Engaging in Sex Act

Detention as a Safe Environment

While you are detained, no one has the right to pressure you to engage in sexual acts or engage in unwanted sexual behavior regardless of your age, size, race, or ethnicity. Regardless of your sexual orientation, you have the right to be safe from unwanted sexual advances and acts.

Confidentiality

Information concerning the identity of a detainee victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have the need to know in order to make decisions concerning the detainee-victim's welfare and for law enforcement investigative purposes.

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Report All Assaults!

If you become a victim of a sexual assault, you should report it immediately to any staff person you trust, to include housing officers, chaplains, medical staff, supervisors or Deputy U.S. Marshals. Staff members keep the reported information confidential and only discuss it with the appropriate officials on a need to know basis. If you are not comfortable reporting the assault to staff, you have other options:

- Write a letter reporting the sexual misconduct to the person in charge or the United States Marshal. To ensure confidentiality, use special (Legal) mail procedures.
- File an Emergency Detainee Grievance - If you decide your complaint is too sensitive to file with the Officer in Charge, you can file your Grievance directly with the Field Office Director. You can get the forms from your housing unit officer, or a Facility supervisor.
- Write to the Office of Inspector General (OIG), which investigates allegations of staff misconduct. The address is: Office of Inspector General, U.S. Department of Justice, 950 Pennsylvania Ave. Room 4706, Washington, DC. 20530
- Call, at no expense to you, the Office of Inspector General (OIG). The phone number is 1-800-869-4499.

Individuals who sexually abuse or assault detainees can only be disciplined or prosecuted if the abuse is reported.

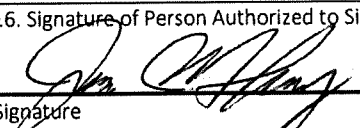
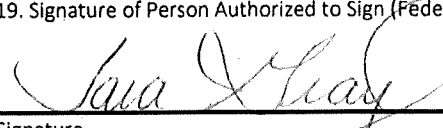
A publication of the Office of the
Federal Detention Trustee
Washington, DC

Published February 2008

Exhibit C

U.S. Department of Justice
United States Marshals Service
Prisoner Operations Division

Detention Services
Intergovernmental Agreement

1. Agreement Number 32-15-0019	2. Effective Date October 1, 2019	3. Facility Code(s) 4EJ	4. DUNS Number 102136710
5. Issuing Federal Agency United States Marshals Service Prisoner Operations Division Office of Detention Services CG-3, 3 rd Floor Washington, DC 20530-0001		6. Local Government Laurel County Jail 206 W Fourth Street London, KY 40741 Tax ID#: 61-6000855	
7. Appropriation Data 15-1020/X		8. Local Contact Person: E-mail: Telephone:	Jamie Mosley, Jailer jamie.mosley@laurelcountycorrectionsky.gov (606) 878-9431
9. Services		10. Estimated Number of Federal Beds	11. Per Diem Rate
This agreement is for the housing, safekeeping, and subsistence of Federal detainees, in accordance with content set forth herein.		Male: 90 Female: 10 Total: 100	\$54.00
12. Guard/Transportation Hourly Rate		13. Optional Guard/Transportation Services	
Guard/Transportation Hourly Rate: \$23.00 Mileage shall be reimbursed by the Federal Government at the General Services Administration (GSA) Federal Travel Regulation Mileage Rate.		<input checked="" type="checkbox"/> Medical <input type="checkbox"/> Other _____ <input checked="" type="checkbox"/> U.S. Courthouse <input type="checkbox"/> JPATS <input type="checkbox"/> Encompassed _____	
14. Department Of Labor Wage Determination			
<input type="checkbox"/> Wages Incorporated _____			
15. Local Government Certification <i>To the best of my knowledge and belief, information submitted in support of this agreement is true and correct. This document has been duly authorized by the governing authorities of their applying Department or Agency State or County Government and therefore agree to comply with all provisions set forth herein this document.</i>		16. Signature of Person Authorized to Sign (Local)  Signature JAMIE MOSLEY Print Name LAUREL COUNTY JAILER 10-21-19 Title Date	
17. Federal Detainee Type Authorized	18. Other Authorized Agency User	19. Signature of Person Authorized to Sign (Federal)	
<input checked="" type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female	<input checked="" type="checkbox"/> BOP <input checked="" type="checkbox"/> ICE <input type="checkbox"/> Other _____	 Signature Tara X. Gray Print Name Grants Specialist 10-31-19 Title Date	

Agreement Number 32-15-0019

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Agreement Number 32-15-0019

Authority

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Act of 2001 (Public Law 106-553), this Agreement is entered into between the United States Marshals Service (hereinafter referred to as the "Federal Government") and LAUREL COUNTY JAIL (hereinafter referred to as "Local Government"), who hereby agree as follows:

Purpose of Agreement and Security Provided

The Federal Government and the Local Government establish this Agreement that allows the United States Marshals Service (USMS) or other authorized agency user as noted in block #18 on page (1) to house Federal detainees with the Local Government at the LAUREL COUNTY JAIL, 206 W FOURTH STREET, LONDON, KY 40741 (hereinafter referred to as "the Facility") designated in #6 page 1.

The population(hereinafter referred to as "Federal detainees,") will include individuals charged with Federal offenses and detained while awaiting trial, individuals who have been sentenced and are awaiting designation and transport to a Bureau of Prisons (BOP) facility, and individuals who are awaiting a hearing on their immigration status or deportation.

The Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of Federal detainees in accordance with all state and local laws, standards, regulations, policies and court orders applicable to the operation of the Facility. Detainees shall also be housed in a manner that is consistent with Federal law and the Federal Performance Based Detention Standards and/or any other standards required by an authorized agency whose detainees are housed by the Local Government pursuant to this Agreement.

The USMS ensures the secure custody, care, and safekeeping of USMS detainees. Accordingly, all housing or work assignments, and recreation or other activities for USMS detainees are permitted only within secure areas of the building or within the secure external recreational/exercise areas.

At all times, the Federal Government shall have access to the Facility and to the Federal detainees housed there, and to all records pertaining to this Agreement, including financial records, for a period going back three (3) years from the date of request by the Federal Government.

Period of Performance and Termination

This Agreement is effective upon the date of on page 1 in block #2 and signature of the authorized USMS Prisoner Operations Division official, and remains in effect unless inactivated in writing by either party. Either party may terminate this Agreement for any reason with written notice at least thirty (30) calendar days in advance of termination, unless an emergency situation requires the immediate relocation of Federal detainees.

Where the Local Government has received a Cooperative Agreement Program (CAP) award, the termination provisions of the CAP prevail.

Agreement Number 32-15-0019

Assignment and Outsourcing of Jail Operations

The overall management and operation of the Facility housing Federal detainees may not be contracted out without the prior express written consent of the Federal Government.

Medical Services

The Local Government shall provide Federal detainees with the same level and range of care **inside** the Facility as that provided to state and local detainees. The Local Government is financially responsible for all medical care provided **inside** the Facility to Federal detainees. This includes the cost of all medical, dental, and mental health care as well as the cost of medical supplies, over-the-counter medications and, any prescription medications routinely stocked by the Facility which are provided to Federal detainees. When possible, generic medications should be prescribed. The cost of all of the above-referenced medical care is covered by the Federal per diem rate. However, for specialized medical services not routinely provided within the Facility, such as dialysis, the Federal Government will pay for the cost of that service.

The Federal Government is financially responsible for all medical care provided **outside** the Facility to Federal detainees. The Federal Government must be billed directly by outside medical care providers pursuant to arrangements made by the Local Government for outside medical care. The Local Government should utilize outside medical care providers that are covered by the USMS's National Managed Care Contract (NMCC) to reduce the costs and administrative workload associated with these medical services. The Local Government can obtain information about NMCC covered providers from the local USMS District Office. The Federal Government will be billed directly by the medical care provider **not** the Local Government. To ensure that Medicare rates are properly applied, medical claims for Federal detainees must be on Centers for Medicare and Medicaid (CMS) Forms so that they can be re-priced to Medicare rates in accordance with the provisions of Title 18 U.S.C. Section 4006. If the Local Government receives any bills for medical care provided to Federal detainees outside the Facility, the Local Government should immediately forward those bills to the Federal Government for processing.

All **outside** medical care provided to Federal detainees must be pre-approved by the Federal Government except in a medical emergency. In the event of an emergency, the Local Government shall proceed immediately with necessary medical treatment. In such an event, the Local Government shall notify the Federal Government immediately regarding the nature of the Federal detainee's illness or injury as well as the types of treatment provided.

Medical care for Federal detainees shall be provided by the Local Government in accordance with the provisions of USMS, Publication 100-Prisoner Health Care Standards (www.usmarshals.gov/prisoner/standards.htm) and in compliance with the Federal Performance Based Detention Standards or those standards which may be required by any other authorized agency user. The Local Government is responsible for all associated medical record keeping.

The Facility shall have in place an adequate infectious disease control program which includes testing of all Federal detainees for Tuberculosis (TB) within 14 days of intake.

Agreement Number 32-15-0019

TB testing shall be accomplished in accordance with the latest Centers for Disease Control (CDC) Guidelines and the result promptly documented in the Federal detainee's medical record. Special requests for expedited TB testing and clearance (to include time sensitive moves) will be accomplished through advance coordination by the Federal Government and Local Government.

The Local Government shall immediately notify the Federal Government of any cases of suspected or active TB or any other highly communicable diseases such as Severe Acute Respiratory Syndrome (SARS), Avian Flu, Methicillin-Resistant Staphylococcus Aureus (MRSA), Chicken Pox, etc., which might affect scheduled transports or productions so that protective measures can be taken by the Federal Government.

When a Federal detainee is being transferred and/or released from the Facility, they will be provided with seven (7) days of prescription medication which will be dispensed from the Facility. Medical records and the USM-553 must travel with the Federal detainee. If the records are maintained at a medical contractor's facility, it is the Local Government's responsibility to obtain them before a Federal detainee is moved.

Federal detainees may be charged a medical co-payment by the Local Government in accordance with the provisions of Title 18, USC Section 4013(d). The Federal Government is not responsible for medical co-payments and cannot be billed for these costs even for indigent Federal detainees.

Affordable Care Act

The Local Government shall provide Federal detainees, upon release of custody, information regarding the Affordable Care Act, The Affordable Care Act website is located at <http://www.hhs.gov/healthcare/about-the-aca/index.html>.

Receiving and Discharge of Federal Detainees

The Local Government agrees to accept Federal detainees only upon presentation by a law enforcement officer of the Federal Government or a USMS designee with proper agency credentials

The Local Government shall not relocate a Federal detainee from one facility under its control to another facility not described in this Agreement without permission of the Federal Government. Additional facilities within the same Agreement shall be identified in a modification.

The Local Government agrees to release Federal detainees only to law enforcement officers of the authorized Federal Government agency initially committing the Federal detainee (i.e., Drug Enforcement Administration (DEA), Immigration and Customs Enforcement (ICE), etc.) or to a Deputy United States Marshal (DUSM) or USMS designee with proper agency credentials. Those Federal detainees who are remanded to custody by a DUSM may only be released to a DUSM or an agent specified by the DUSM of the Judicial District.

USMS Federal detainees sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement on Detainers and then only with the concurrence of the jurisdictional United States Marshal (USM).

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Optional Guard/Transportation Services to Medical Facility

If Medical Facility in block #13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at the Facility to and from a medical facility for outpatient care, and transportation and stationary guard services for Federal detainees admitted to a medical facility.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel. Criteria as specified by the County Entity running the facility. In all cases these are part of a fulltime Law Enforcement Officer (LEO) or Correctional Officer (CO) that have met the minimum training requirements.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirement for security, prisoner monitoring, visitation, and contraband control.

If an hourly rate for these services have been agreed upon to reimburse the Local Government, it will be stipulated in block #12 on page one (1) of this Agreement. After **thirty-six (36) months**, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Optional Guard/Transportation Services to U.S. Courthouse

If U.S. Courthouse in block #13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at its facility to and from the U.S. Courthouse.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at the courthouse, the Local Government's transportation and escort guard will turn Federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport Federal detainees to any U.S. Courthouse without a specific request from the USM or their designee who will provide the detainee's name, the U.S. Courthouse, and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation unless otherwise authorized by the USMS.

If an hourly rate for these services have been agreed upon to reimburse the Local Government, it will be stipulated in block #12 on page one (1) of this Agreement. After **thirty-six (36) months**, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Agreement Number 32-15-0019

Optional Guard/Transportation Services to Justice Prisoner & Alien Transportation System (JPATS)

If JPATS in block #13 on page one (1) of this Agreement is checked, the Local Government agrees, subject to the availability of its personnel, to provide transportation and escort guard services for Federal detainees housed at its facility to and from the JPATS.

These services should be performed by at least two (2) armed qualified law enforcement or correctional officer personnel.

The Local Government agrees to augment this security escort if requested by the USM to enhance specific requirements for security, detainee monitoring, and contraband control.

Upon arrival at JPATS, the Local Government's transportation and escort guards will turn federal detainees over to a DUSM only upon presentation by the deputy of proper law enforcement credentials.

The Local Government will not transport federal detainees to the airlift without a specific request from the USM who will provide the detainee's name, location (district), and the date the detainee is to be transported.

Each detainee will be restrained in handcuffs, waist chains, and leg irons during transportation.

If an hourly rate for these services has been agreed upon to reimburse the Local Government, it will be stipulated on in block #12 on page one (1) of this Agreement. After **thirty-six (36) months**, if a rate adjustment is desired, the Local Government shall submit a request. Mileage shall be reimbursed in accordance with the current GSA mileage rate.

Special Notifications

The Local Government shall notify the Federal Government of any activity by a Federal detainee which would likely result in litigation or alleged criminal activity.

The Local Government shall immediately notify the Federal Government of an escape of a Federal detainee. The Local Government shall use all reasonable means to apprehend the escaped Federal detainee and all reasonable costs in connection therewith shall be borne by the Local Government. The Federal Government shall have primary responsibility and authority to direct the pursuit and capture of such escaped Federal detainees. Additionally, the Local Government shall notify the Federal Government as soon as possible when a Federal detainee is involved in an attempted escape or conspiracy to escape from the Facility.

In the event of the death or assault or a medical emergency of a Federal detainee, the Local Government shall immediately notify the Federal Government.

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Restrictive Housing and Suicide Prevention

The Local Government shall have written policies, procedures, and practices requiring that all detainees in restrictive housing are personally observed by a correctional officer at least twice per hour, but no more than 40 minutes apart, on an irregular schedule. Detainees who are violent or mentally ill or who demonstrate unusual or bizarre behavior receive more frequent observation; suicidal detainees are under constant observation.

The Local Government shall immediately notify the concerned Chief Deputy U.S. Marshal, or his or her designee, when a member of a vulnerable population is placed in restrictive housing or their restrictive housing status changes.

The Local Government shall also provide reports to the USMS on a monthly basis listing all USMS detainees who were detained in restrictive housing, and the reasons for their assignment to restrictive housing. The report shall be submitted to the Chief Deputy U.S. Marshal, or his or her designee, no later than the tenth day of each month in a standard format established by the USMS.

The Local Government shall have a comprehensive suicide-prevention program in place incorporating all aspects of identification, assessment, evaluation, treatment, preventive intervention, and annual training of all medical, mental health, and correctional staff.

For the purposes of this Agreement, "restrictive housing" means any type of detention that involves all of the following three basic elements:

1. Removal from the general population, whether voluntary or involuntary;
2. Placement in a locked room or cell, whether alone or with another detainee; and
3. Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

For the purposes of this Agreement, "vulnerable population" means juveniles and individuals with serious mental illness.

Prison Rape Elimination Act (PREA)

The Facility must post the Prison Rape Elimination Act brochure/bulletin in each housing unit of the Facility. The Facility must abide by all relevant PREA regulations.

Service Contract Act

This Agreement incorporates the following clause by reference, with the same force and effect as if it was given in full text. Upon request, the full text will be made available. The full text of this provision may be accessed electronically at this address: <http://www.dol.gov/oasam/regs/statutes/351.htm>.

Federal Acquisition Regulation Clause(s):

52.222-41 Service Contract Act of 1965, as Amended (July 2005)

Agreement Number 32-15-0019

52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

52.222-43 Fair Labor Standards Act and the Service Contract Act – Price Adjustment (Multiyear and Option Contracts) (May 1989)

The current Local Government wage rates shall be the prevailing wages unless notified by the Federal Government.

If the Department of Labor Wage Determination block #14 on page one (1) of this Agreement is checked, the Local Government agrees, in accordance with FAR PART 52.222.43 (f), must notify the Federal Government of any increase or decrease in applicable wages and fringe benefits claimed under this clause within 30 days after receiving a new wage determination.

Per-Diem Rate

The Federal Government will use various price analysis techniques and procedures to ensure the per-diem rate established by this Agreement is considered a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

1. Comparison of the requested per-diem rate with the independent Federal Government estimate for detention services, otherwise known as the Core Rate;
2. Comparison with per-diem rates at other state or local facilities of similar size and economic conditions;
3. Comparison of previously proposed prices and previous Federal Government and commercial contract prices with current proposed prices for the same or similar items;
4. Evaluation of the provided jail operating expense information;

The firm-fixed per-diem rate for services is stipulated in block #11 on page (1) of this agreement, and shall not be subject to adjustment on the basis of LAUREL COUNTY JAIL actual cost experience in providing the service. The per-diem rate shall be fixed for a period from the effective date of this Agreement forward for **thirty-six (36) months**. The per-diem rate covers the support of one Federal detainee per "Federal detainee day", which shall include the day of arrival, but not the day of departure.

After **thirty-six (36) months**, if a per-diem rate adjustment is desired, the Local Government shall submit a request through the United States Marshals Service (USMS) electronic Intergovernmental Agreements (eIGA) area of the Detention Services Network (DSNetwork). All information pertaining to the Facility on the DSNetwork will be required before a new per-diem rate will be considered.

Billing and Financial Provisions

The Local Government shall prepare and submit for certification and payment, original and separate invoices each month to each Federal Government component responsible for Federal detainees housed at the Facility.

Agreement Number 32-15-0019

Addresses for the components are:

United States Marshals Service
Eastern District of Kentucky
162 Federal Building
101 Barr Street
Lexington, KY 40507
(859) 233-2513

Bureau Office Prisons
RRM Nashville
RESIDENTIAL REENTRY OFFICE
701 BROADWAY ST, SUITE 124
NASHVILLE, TN 37203

U.S. Immigrations and Custom
Enforcement
Chicago Field Office
101 W Ida B Wells Drive Suite 4000
Chicago, IL, 60605
Phone: (312) 347-2400

To constitute a proper monthly invoice, the name and address of the Facility, the name of each Federal detainee, their specific dates of confinement, the total days to be paid, the appropriate per diem rate as approved in the Agreement, and the total amount billed (total days multiplied by the per-diem rate per day) shall be listed, along with the name, title, complete address, and telephone number of the Local Government official responsible for invoice preparation. Additional services provided, such as transportation and guard services, shall be listed separately and itemized.

Nothing contained herein shall be construed to obligate the Federal Government to any expenditure or obligation of funds in excess of, or in advance of, appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341.

Payment Procedures

The Federal Government will make payments to the Local Government at the address listed in block #6 on page one (1) of this Agreement, on a monthly basis, promptly, after receipt of an appropriate invoice.

Hold Harmless

It is understood and agreed that the Local Government shall fully defend, indemnify, and hold harmless the United States of America, its officers, employees, agents, and servants, individually and officially, for any and all liability caused by any act of any member of the Local Government or anyone else arising out of the use, operation, or handling of any property (to include any vehicle, equipment, and supplies) furnished to the Local Government in which legal ownership is retained by the United States of America, and to pay all claims, damages, judgments, legal costs, adjuster fees, and attorney fees related thereto. The Local Government will be solely responsible for all maintenance, storage, and other expenses related to the care and responsibility for all property furnished to the Local Government.

Agreement Number 32-15-0019

Disputes

Disputes, questions, or concerns pertaining to this Agreement will be resolved between appropriate officials of each party. Both the parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

Inspection of Services

Inspection standards for detainees may differ among authorized agency users. The Local Government agrees to allow periodic inspections by Federal Government inspectors, to include approved Federal contractors, in accordance with the Federal Performance Based Detention Standards required by any or all of the Federal authorized agency users whose detainees may be housed pursuant to this Agreement. Findings of the inspections will be shared with the Facility administrator in order to promote improvements to Facility operations, conditions of confinement, and levels of services.

Modifications

For all modifications except for full or partial terminations, either party may initiate a request for modification to this Agreement in writing. All modifications negotiated will be effective only upon written approval of both parties.

Litigation

The Federal Government shall be notified, in writing, of all litigation pertaining to this Agreement and provided copies of any pleadings filed or said litigation within five (5) working days of the filing.

The Local Government shall cooperate with the Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to Federal Government or Local Government litigation.

Agreement Number 32-15-0019

Rape Elimination Act Reporting Information

SEXUAL ASSAULT AWARENESS

This document is requested to be posted in each Housing Unit Bulletin Board at all Contract Detention Facilities. This document may be used and adapted by Intergovernmental Service Agreement Providers.

While detained by the Department of Justice, United States Marshals Service, you have a right to be safe and free from sexual harassment and sexual assaults.

Definitions

A. Detainee-on-Detainee Sexual Abuse/Assault

One or more detainees engaging in or attempting to engage in a sexual act with another detainee or the use of threats, intimidation, inappropriate touching or other actions and/or communications by one or more detainees aimed at coercing and/or pressuring another detainee to engage in a sexual act.

B. Staff-on-Detainee Sexual Abuse/Assault

Staff member engaging in, or attempting to engage in a sexual act with any detainee or the intentional touching of a detainee's genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desires of any person. Sexual abuse/assault of detainees by staff or other detainees is an inappropriate use of power and is prohibited by DOJ policy and the law.

C. Staff Sexual Misconduct Is:

Sexual behavior between a staff member and detainee which can include, but is not limited to indecent, profane or abusive language or gestures and inappropriate visual surveillance of detainees.

Prohibited Acts

A detainee, who engages in inappropriate sexual behavior with or directs it at others, can be charged with the following Prohibited Acts under the Detainee Disciplinary Policy.

- Using Abusive or Obscene Language
- Sexual Assault
- Making a Sexual Proposal
- Indecent Exposure
- Engaging in Sex Act

Detention as a Safe Environment

While you are detained, no one has the right to pressure you to engage in sexual acts or engage in unwanted sexual behavior regardless of your age, size, race, or ethnicity. Regardless of your sexual orientation, you have the right to be safe from unwanted sexual advances and acts.

Confidentiality

Information concerning the identity of a detainee victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have the need to know in order to make decisions concerning the detainee-victim's welfare and for law enforcement investigative purposes.

Agreement Number 32-15-0019

Report All Assaults!

If you become a victim of a sexual assault, you should report it immediately to any staff person you trust, to include housing officers, chaplains, medical staff, supervisors or Deputy U.S. Marshals. Staff members keep the reported information confidential and only discuss it with the appropriate officials on a need to know basis. If you are not comfortable reporting the assault to staff, you have other options:

- Write a letter reporting the sexual misconduct to the person in charge or the United States Marshal. To ensure confidentiality, use special (Legal) mail procedures.
- File an Emergency Detainee Grievance - If you decide your complaint is too sensitive to file with the Officer in Charge, you can file your Grievance directly with the Field Office Director. You can get the forms from your housing unit officer, or a Facility supervisor.
- Write to the Office of Inspector General (OIG), which investigates allegations of staff misconduct. The address is: Office of Inspector General, U.S. Department of Justice, 950 Pennsylvania Ave. Room 4706, Washington, DC. 20530
- Call, at no expense to you, the Office of Inspector General (OIG). The phone number is 1-800-869-4499.

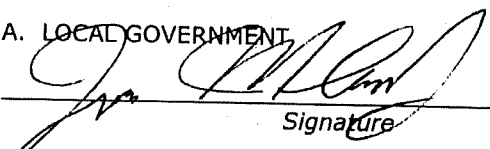

Individuals who sexually abuse or assault detainees can only be disciplined or prosecuted if the abuse is reported.

A publication of the Office of the
Federal Detention Trustee
Washington, DC

Published February 2008

**U. S. Department of Justice
United States Marshals Service**

Modification of Intergovernmental Agreement

1. Agreement No. 32-15-0019	2. Effective Date December 6, 2019	3. Facility Code(s) 4EJ	4. Modification No. Two (2)	5. DUNS No. 102136710
6. Issuing Federal Agency United States Marshals Service Prisoner Operations Division Office of Detention Services CS-3, 5 th Floor Washington, DC 20530-1000		7. Local Government Laurel County Jail 206 W Fourth Street London, KY 40741 Tax ID#: 61-6000855		
8. Appropriation Data 15X1020	9. Per-Diem Rate \$54.00	10. Guard/Transportation Hourly Rate \$23.00 Mileage shall be reimbursed by the Federal Government at the General Services Administration (GSA) Federal Travel Regulation Mileage Rate		
<p>11. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 1, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:</p> <p>THE PURPOSE OF THIS MODIFICATION IS TO ADD THE EASTERN DISTRICT OF TENNESSEE AS A RIDER TO THE CURRENT IGA REFERRED TO IN BLOCK 1. BILLING ADDRESS IS:</p> <p style="text-align: center;">United States Marshals Service Eastern District of Tennessee Howard H. Baker Jr. U.S. Courthouse 800 Market Street, Suite 320 Knoxville, TN 37902 (865) 545-4182</p> <p>ALL OTHER CONDITIONS AND TERMS ARE TO REMAIN THE SAME IN ACCORDANCE WITH THE TERMS OF THE CURRENT INTERGOVERNMENTAL AGREEMENT.</p>				
12. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:				
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ALL COPIES TO U. S. MARSHAL		
13. APPROVALS				
<p>A. LOCAL GOVERNMENT</p> <p> Signature</p> <p>LAUREL CO. JAILER TITLE</p> <p>12-11-19 DATE</p>		<p>B. FEDERAL GOVERNMENT</p> <p> Signature</p> <p>Grants Specialist TITLE</p> <p>12-6-2019 DATE</p>		

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT
Electronically filed

COMMONWEALTH OF KENTUCKY, et. al.

Plaintiffs

v.

JOSEPH R. BIDEN in his official capacity as
President of the United States, *et. al.*;

Defendants

Civil Action No. 3:21-cv-
00055-GFVT

TEMPORARY RESTRAINING ORDER

Plaintiffs the Commonwealth of Kentucky, the State of Ohio, and the State of Tennessee, by and through their Attorneys General; Frederick W. Stevens, in his official capacity as Sheriff for the Seneca County (Ohio) Sheriff's Office; and Scott A. Hildenbrand, in his official capacity as Sheriff for the Geauga County (Ohio) Sheriff's Office, move the Court to hold an emergency hearing and enter a temporary restraining order against the federal contractor vaccine mandate within the Commonwealth of Kentucky, the State of Ohio, and the State of Tennessee and with respect to any of its citizens. Plaintiffs also seek a temporary restraining order prohibiting Defendants and those acting in concert with them from enforcing the federal contractor mandate on any federal contracting agency, contractor, subcontractor, and employees anywhere in the United States. For the reasons stated

in the Plaintiff's motion, the motion is GRANTED. The Court ENJOINS enforcement of the federal contractor vaccine mandate.

So ordered this ____ day of _____, 2021, at _____.